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# Quick Analysis for Busy Decision Makers

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ROBERT D. BEHN

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## Chapter 2

# The Basic Decision Dilemma: The Angina/Bypass Surgery Decision

OLLERTON WATT, a manufacturing executive, must make one of the most important decisions of his life. The decision does not involve his responsibilities as head of his firm's Chicago plant. Nor does it concern the uncompleted biography of Cyrus H. McCormick, the inventor and industrialist, on which he has been working for a decade. Rather, Watt's decision concerns his own life and future and that of his family, too.

For over a year, Watt has been suffering from angina pectoris—chest pains caused by coronary heart disease. (Arteriosclerosis, or hardening of the arteries, blocks the flow of blood in the three major coronary arteries that provide blood, and thus oxygen, to the heart muscles. When, because of excitement or exercise, the heart needs extra blood, the result can be angina pains.) Last week, Watt had a complete cardiac work-up, including an angiogram, and now his physician, Dr. Roberta Dwightson, has told him that although two of his three coronary arteries are clear, the third is 90-percent blocked. This explains why Watt has chest pains whenever he walks up two flights of stairs or takes a half-mile stroll through Lake Shore Park, near his Chicago apartment.

Medical therapy has proven, for Watt, to be a completely inadequate remedy, and so Dr. Dwightson has told him that he can elect to have surgery to bypass the blocked blood vessels and relieve the pain. Such bypass surgery involves the removal of a section of the saphenous vein from the patient's leg;

## The Basic Decision Dilemma

this vein is then used to bypass the blocked coronary artery. All indications are that, upon successful completion of the operation, Watt's angina will be completely relieved and he will be able to engage in moderate exercise without suffering from chest pain. There is, however, little evidence to indicate that the operation will prolong Watt's life. In fact there is a considerable ongoing debate within the medical profession about the impact of coronary bypass surgery on life expectancy.

Watt's problem is not unique—approximately two million Americans have angina, and over one hundred thousand bypass operations are performed each year in the United States—but that does not make Watt's decision any easier. For there is no guarantee that the operation will be a success. Indeed, Dr. Dwightson has told Watt that, given his age of fifty-five, his medical history, and his physical condition, there is a 10-percent chance that he will die on the operating table.<sup>1</sup>

Watt is clearly worried as he explains his problem to his wife and daughter. How significant, really, is the 10-percent chance of dying? Are the angina pains really crippling, or are they more a mere discomfort? Should he ask Dr. Dwightson any more questions? Should he ask for more tests? Should he worry about finishing his book, or is that too unimportant to influence his decision? Indeed, what factors are important for him to consider—and how should he consider them? How, Watt wonders, should he determine if the potential benefits of the operation are worth the risk?<sup>2</sup>

### *Analyzing the Dilemma: Structuring the Decision*

Ollerton Watt's problem is truly a dilemma. There is no right or wrong decision; different people will—and do—make different choices. Consequently, the purpose of undertaking an analysis of the angina decision dilemma is not to determine what is the correct answer, but to determine how a decision maker could organize his thinking about this problem so that his choice truly reflects his beliefs about how likely each uncertain outcome is, and his preferences for those various outcomes.

Although this decision dilemma can be described in a few brief paragraphs, it involves almost all of the features that complicate even the most intricate decision problem. As with any other decision dilemma, the alternative selected depends upon how the decision maker structures his thinking and upon his predictions and preferences. Indeed, the purpose of organizing your thinking about a decision problem is to focus your attention on your key predictions (your assessments of the probabilities of the most important uncertain events)

and on your critical preferences (your appraisals of the relative desirabilities of the most important outcomes).

How should Ollerton Watt think about his decision? The first step is to describe the essential features of the problem. This can be done in several ways; one is a simple prose paragraph.

Mr. Watt has two alternatives. One alternative is not to have bypass surgery. The result of this choice is certain; Mr. Watt will continue to live but will also continue to have angina attacks. The second alternative is to have bypass surgery. There are two possible outcomes of this choice. There is a 90-percent chance that the operation will be a success; Mr. Watt will live and will have no chest pains. There is, however, a 10-percent chance that Mr. Watt will die during surgery.

This describes the essential features of the decision dilemma. Since there is no evidence that the operation will prolong life expectancy, this factor does not influence the decision and is thus ignored. Other factors, such as Mr. Watt's chances of completing the book on which he is working, have also been ignored; they might be included in a more elaborate, second-cut analysis.

The short preceding paragraph is not the only way to describe this decision problem. It is also possible to use a diagram called, in the idiom of decision analysis, a *decision tree*. A decision tree is a road map for a decision problem. It lays out in schematic form the decision alternatives, the uncertain events, the possible outcomes of such events, and the consequences of each outcome, all in the order that the decision maker will face them.

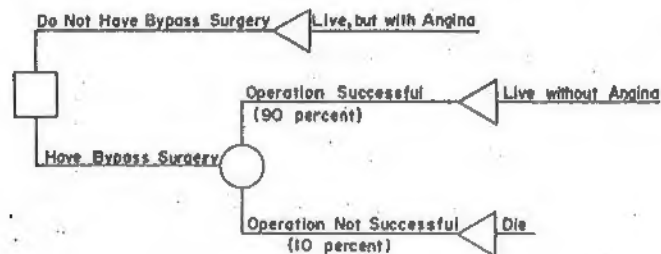


Figure 2-1. A Decision Tree for the Angina Decision Dilemma.

A decision tree is read from left to right. The first component on a decision tree is a square *decision node*, which indicates the (initial) decision facing the decision maker. For Mr. Watt's problem (figure 2-1), there are two choices ("Have Bypass Surgery" and "Do Not Have Bypass Surgery"), indicated by two *decision* (or *alternative*) *branches* attached to this decision node. The

## The Basic Decision Dilemma

upper decision alternative, "Do Not Have Bypass Surgery," has a known, certain outcome; thus, this decision branch leads directly to a triangular *terminal node* to which is attached a *consequence branch* labeled "Live, but with Angina." For the lower decision alternative, "Have Bypass Surgery," the outcome is uncertain; thus, the lower decision branch leads to a circular *uncertainty* (or chance or event) *node* to which are attached two *outcome* (or chance or event) *branches*. The upper outcome branch is labeled "Operation Successful" and the probability of this outcome occurring is given underneath in parentheses. (The lower outcome branch is similarly labeled.) To each outcome branch is attached a terminal node and a consequence branch. For example, the consequence of a successful operation is to "Live without Angina."

The decision-tree description of the problem provides exactly the same information—no more, no less—as does the one-paragraph description. But, as with a road map, once you learn the basic symbols, a schematic presentation is more helpful than an expository one. If you want to get to Devonshire Street in downtown Boston, would you rather have a road map or a set of written instructions?

A decision tree has several other advantages. First, drawing a decision tree forces you to decompose your decision problem into its more manageable component parts. The decisions to be made, the uncertain events to be faced, the possible outcomes for each uncertainty, and the consequences of each final outcome are the basic components of any decision problem.

Second, drawing a decision tree forces you to be explicit in simplifying your problem. You must decide what factors to include in your analysis (to draw on your tree) and what factors to ignore. For example, Mr. Watt has ignored the question of whether he will finish his book because the book is not central to the reason why this decision is a dilemma. Mr. Watt's dilemma is a question of life and death, and the quality of life, and thus he decides to ignore that factor. He has also ignored the possibility that surgery will not cure his angina; it is possible that he would survive the operation but still suffer from chest pains, but the chances of this happening in Watt's particular case are one-half of 1 percent. Consequently, he can ignore this complication, at least for a first-cut analysis. These and other complications can be added in a second cut.

Third, drawing a decision tree requires you to specify your beliefs about uncertainty and your preferences for the outcomes. There is, for example, a specific place under each outcome branch to indicate the probability that that outcome will occur. Also (as will be explained shortly), there is a specific place to note your preferences for the terminal outcomes.

Finally, a decision tree presents the various factors in their proper relationship with each other. Reading the decision tree from left to right, the decision

maker confronts the various sequences of decisions, uncertain events, outcomes, and consequences just as he may confront them in real life.

## Analyzing the Dilemma: Uncertainty and Probabilities

There is no magic formula for resolving the angina/bypass surgery dilemma. But with the problem decomposed into its essential features, the fundamental nature of the dilemma is clear: Does Mr. Watt prefer (1) the riskless alternative of living with angina, or (2) the risky alternative with a 90-percent chance of living without angina, and a 10-percent chance of dying? To answer this question, Watt must think carefully about the uncertainties he faces and his relative preferences for the possible outcomes.

First, Watt must examine the uncertainties. He has been told by his doctor that, if he has bypass surgery, he faces a 10-percent chance of dying. What does this mean? It does not mean that ten out of every one hundred people who have bypass surgery die; the overall death rate is about 4 percent.<sup>1</sup> Watt is not an average patient; he has particular problems that complicate his case and make his chances of survival less than average. By comparing him with men with similar complications and health characteristics, Dr. Dwightson has decided that Watt's chances of surviving surgery are 90 percent.

Still, exactly what does it mean that Watt has a 90-percent chance of living and a 10-percent chance of dying? The decision tree in figure 2-2 provides an interpretation. Here there is a choice between two gambles: having bypass surgery or drawing a ball from an urn that contains 90 green balls and 10 white balls. The possible outcomes for both gambles are the same: Watt can either live without angina or die. When Dr. Dwightson tells Watt that she believes there is a 90-percent chance of his surviving bypass surgery, she is really making the judgment that his chances of living (and dying) are identical for both gambles in figure 2-2. If there were 99 green balls and only 1 white ball in the urn, Dwightson would quickly recommend gambling on the urn. If, however, there were 80 green balls and 20 white ones in the urn, she would tell Watt that his chances of living were better with surgery. The 90 percent is thus a *judgmental probability*; it specifies Dr. Dwightson's best judgment about how likely each outcome of bypass surgery is for Watt.

The decision in figure 2-2 is strictly a hypothetical one. The decision node on this decision tree is drawn as a diamond (rather than as a square) to emphasize the hypothetical nature of the choice. Neither Watt nor Dwightson actually faces this decision; yet thinking about it helps to analyze the real decision that confronts Watt. The hypothetical decision provides a means of

## The Basic Decision Dilemma

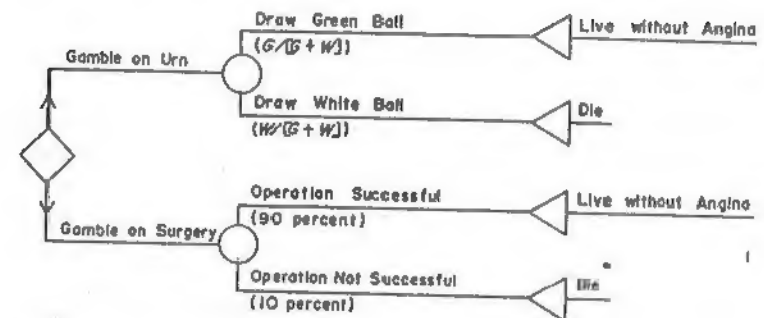


Figure 2-2. An Objective Interpretation of a Judgmental Probability.

specifying, in a clear and unambiguous way, exactly what Dr. Dwightson thinks the chances are for the uncertain outcomes in Watt's original dilemma. The advantage of the hypothetical decision in figure 2-2 is that there are only two possible outcomes, live or die; the interjacent outcome of the original decision does not complicate this choice. Thus, this hypothetical decision concentrates the attention of Watt and Dwightson on the uncertainty Watt faces, and provides an unambiguous interpretation of Watt's probability assessment: If Watt agrees that the probability of his surviving bypass surgery is 90 percent, this is the same as saying he is indifferent about choosing between the two alternatives in figure 2-2 (with this indifference denoted on the decision tree by the arrow pointing up each alternative branch). (More on probabilities in chapter 4.)

## Analyzing the Dilemma: Outcomes and Preferences

The next step in analyzing Ollerton Watt's dilemma is to make some judgments about the relative merits of the three different outcomes. Obviously, living without angina is the best outcome, and dying is the worst. The difficult question is how the third, interjacent outcome—living, but with angina—compares with the other two. Is it almost as good as living without angina? Or is it so bad that it is only slightly better than dying? How can Watt specify his relative preferences for these three outcomes in a manner that will help him resolve his original dilemma?

Decision analysis provides an answer: another hypothetical decision (see

figure 3). This hypothetical decision is similar to Watt's original dilemma: He can either choose the riskless, certain outcome of living with angina, or he can gamble by drawing a ball from an urn, with a red ball resulting in his living without angina and a yellow ball causing him to die. In fact, there are only two differences between this hypothetical decision tree (figure 2-3) and the one for the original dilemma (figure 2-1)—the decision node is a diamond rather

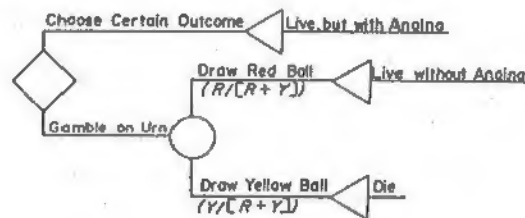


Figure 2-3. Using a Hypothetical Decision to Think about Relative Preferences for Three Outcomes.

than a square, and the uncertain outcome is determined by drawing a ball from an urn rather than by the success or failure of surgery. The latter difference is helpful, for it eliminates the subjective nature of the chances that surgery will be a success. For the hypothetical decision in figure 2-3, there is no ambiguity about the chances of living without angina or dying; these chances are specified by the proportions of red and yellow balls in the urn.

If the urn contains 50 red balls and 50 yellow balls, which hypothetical alternative should Watt choose: living with angina, or a 50-50 chance of living without it versus dying? Unless the angina pain were extremely intense, frequent, and crippling, most people would not choose the gamble if it meant only a 50-percent chance of living. Watt decides that in this situation he prefers the riskless alternative.

Suppose, however, the urn contains 99 red balls and 1 yellow one. Now what should Watt choose? Most people with serious angina problems would be willing to risk a 1-percent chance of dying for a 99-percent chance of living without angina. Watt decides that in this case he prefers the risky alternative.

Watt has now made two specific statements about his relative preferences for the three outcomes. If the probability of living is great enough (99 percent) he prefers the risky alternative; if the probability of living is too low (50 percent) he prefers the riskless alternative. The only difference between these two hypothetical decisions is the probability of drawing a red ball (and thus the probability of living without angina), yet the increase in this probability from 50 percent to 99 percent causes Watt to switch his preference from the riskless to the risky alternative.

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As the number of red balls in the urn increases from 50 to 99 (while the number of yellow balls decreases from 50 to 1), the risky alternative gets better and better. Indeed, as the number of red balls increases, there comes a point at which Watt switches from preferring the riskless alternative to preferring the risky one. This is called the *switch point* or *switch probability*, and shall be denoted by the letter  $V$ . If the probability of drawing a red ball is less than  $V$ , Watt prefers the riskless alternative. If the probability of drawing a red ball is greater than  $V$ , Watt prefers the risky alternative. As the probability of drawing a red ball increases from just below  $V$  to just above it, Watt switches his (hypothetical) decision from the riskless to the risky alternative.

The probability  $V$  can also be called an *indifference probability*, since it is the probability that makes Watt indifferent between the riskless and risky alternatives of his hypothetical dilemma. If the proportion of red balls in the urn is  $V$  (so that the proportion of yellow balls is  $1 - V$ ), Watt is indifferent between the two choices. The interjacent outcome (living, but with angina) is just as good as a gamble that gives a  $V$  chance of the best outcome (living without angina) combined with a  $1 - V$  chance of the worst outcome (dying). To specify his relative preferences for the three possible outcomes of his original dilemma, Watt needs to determine his indifference probability,  $V$ .

Clearly,  $V$  is somewhere between 50 and 99 percent. Determining these lower and upper bounds for  $V$ , however, was easier than determining  $V$  itself. Indeed, the two bounds were chosen precisely because they were easy. The best way to assess an indifference probability is to start with a large range and narrow it down.

For example, suppose there are 60 red and 40 yellow balls in the urn for the hypothetical decision. Which alternative will Watt choose? He decides that he prefers living with angina to a gamble that has a 40-percent chance of dying combined with a 60-percent chance of living without angina. Consequently, the lower bound for  $V$  moves up to 60 percent.

Now suppose there are 95 red and 5 yellow balls in the urn. Here Watt decides that he would take the gamble, even though it involves a 5-percent chance of dying. Thus, the upper bound for  $V$  moves down to 95 percent. Further, Watt decides that if the urn contained 75 red and 25 yellow balls, he would still take the riskless alternative, but if it contained 85 red and 15 yellow balls, he would prefer the risky choice. Consequently, the lower and upper bounds for  $V$  are moved closer: to 75 and 85 percent, respectively.

Clearly,  $V$  is somewhere between 75 and 85 percent, but exactly where is difficult to say. Should  $V$  be 78 percent or 83 percent? As would be expected, Watt has a hard time deciding. Tentatively, he decides that his  $V$  should be 80 percent, while making a mental note to go back and rethink this hypothetical decision if his real life choice is at all affected by a small change in  $V$ .



### Resolving the Dilemma: Recombining the Components

By specifying  $V$ , his indifference, or switch, probability, to be 80 percent, Watt has resolved—indirectly but unequivocally—his dilemma. For the hypothetical decision of figure 2-3, Watt has decided that if the probability of living without angina is greater than 80 percent he prefers the risky alternative, but if the probability is less than 80 percent he prefers the riskless one. For his original dilemma—which is structurally identical to his hypothetical decision—the probability of living without angina is 90 percent. Since this probability is better than the indifference probability of 80 percent, Watt should decide to have surgery.

This reasoning is quite straightforward. It is based on a fundamental idea that can be used to help resolve all sorts of decisions. This is the *substitution principle*:<sup>4</sup> If a decision maker is indifferent between two outcomes, he can replace one outcome on his decision tree with the other without affecting his preferences for the alternatives in the decision he faces. For example, suppose you face a decision for which one possible outcome, in addition to a number of different monetary outcomes, is a two-week paid vacation in Bermuda. Then, if you are indifferent about choosing between such a vacation and \$5,000 in cash, you could ease the task of thinking about that decision by replacing the outcome of a trip to Bermuda with a \$5,000 outcome. Your choice between the original alternatives would not be affected by such a substitution, and you might find it easier to think about your dilemma if the consequences of all the outcomes were monetary.

The substitution principle can be applied to uncertainties as well as outcomes. That is, if a decision maker is indifferent between an uncertain event (with specified outcomes and probabilities) and a particular outcome, he can substitute one for the other, again without affecting his preferences for the alternatives in the decision he faces. For example, Ollerton Watt has decided that he is indifferent between living with angina and drawing a ball from an urn containing 80 red and 20 yellow balls, with a red ball meaning that he will live without angina and a yellow ball meaning that he will die. Consequently, he can substitute the gamble for the certain outcome on his original decision tree without affecting his preferences for that decision. The original decision tree is reproduced as figure 2-4a. Then, in figure 2-4b, the substitution principle is employed—the live, but-with-angina outcome is replaced with a gamble that gives an 80-percent chance of living without angina and a 20-percent chance of dying. To indicate that the substitution principle has been applied, and that something has been replaced by an equivalent gamble, the no-surgery alternative branch is broken and an equals sign inserted (—— = ——). The important concept behind the substitution principle is that if Watt prefers

### The Basic Decision Dilemma

the lower alternative in figure 2-4a, he should also prefer it in figure 2-4b and vice versa; substituting for an outcome a gamble that, in Watt's mind, is equivalent to that outcome should not change his preferences for the two original alternatives.

The substitution principle is also applied to the uncertain outcome of the have-bypass-surgery alternative. Here the interpretation of judgmental probability is employed. Watt and his doctor agree that his chances of surviving surgery are 90 percent. This, as was stated in figure 2-2, means that Watt is indifferent between the uncertainty of bypass surgery and the uncertainty of an urn with 90 green and 10 white balls (when the outcomes of the two uncertainties are the same). Because of this indifference, Watt can replace the

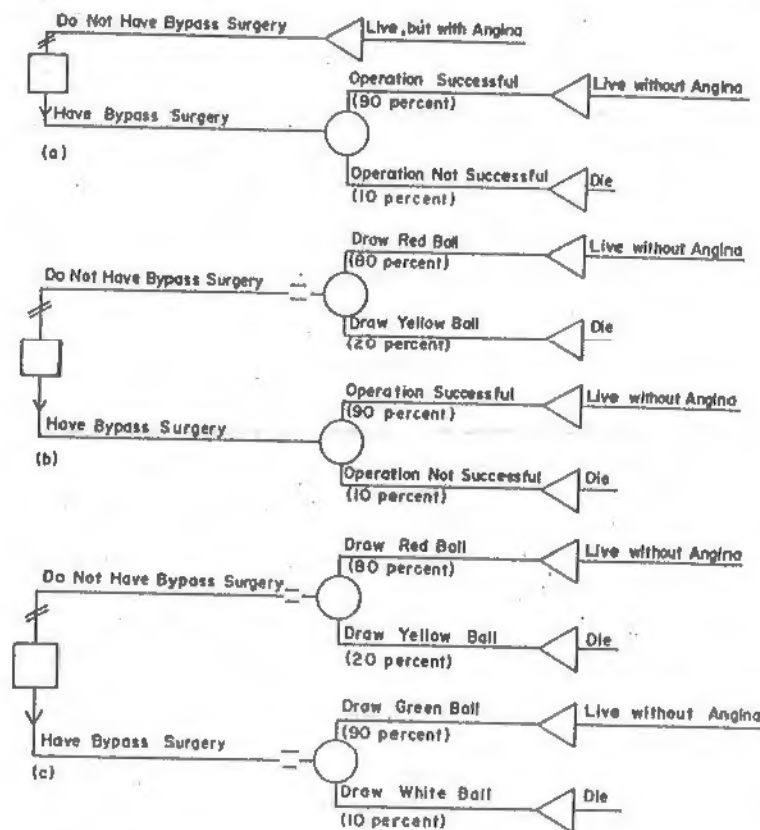


Figure 2-4. The Logic of Using the Substitution Principle to Resolve Ollerton Watt's Angina/Bypass Surgery Decision Dilemma.



first (real) uncertainty on his decision tree with the second (hypothetical) one, again without affecting his choice for the two alternatives. This is done in figure 2-4c.

The choice between the alternatives in figure 2-4c is obvious. The outcomes of the two alternatives are identical. Consequently, the choice can be made simply by comparing the probabilities of getting the best (live-without-angina) outcome. Watt (or anyone) prefers gambling on drawing a green ball from an urn with 90 percent green balls to gambling on drawing a red ball from an urn with only 80 percent red balls. Thus, for the hypothetical dilemma of figure 2-4c, at least, Watt prefers to have bypass surgery. Accordingly, on this decision tree, an arrow is drawn down the have-bypass-surgery alternative branch, and the do-not-have-bypass-surgery branch is crossed off.

Now the substitution principle comes into play. It says that if Watt prefers the surgery alternative for the decision of figure 2-4c, he should also prefer this alternative for the decision of figure 2-4b. After all, the outcomes of the two decisions are identical. The only difference between the two decisions is that the uncertainty of bypass surgery in figure 2-4b was replaced in figure 2-4c with what Watt decided was the equivalent uncertainty of an urn with green and white balls. Indeed, the purpose of the urn was to specify the meaning of a 90-percent chance of surviving surgery. Since the decision of figure 2-4b is a choice between an (objective) 80-percent chance of living and a (judgmental) 90-percent chance of living, the greater chance of living is better (as long as this judgmental probability has an objective interpretation, which is provided by figure 2-2). Again, an arrow is drawn to indicate which alternative is chosen.

The same logic (based on the substitution principle) applies in using the choice made in figure 2-4b to decide between the alternatives in figure 2-4a. For the decision in figure 2-4b, Watt decided that he preferred the uncertainty of bypass surgery (A), to the uncertainty of the urn with 80 red and 20 yellow balls (B). For the decision in figure 2-3, Watt decided he was indifferent between B and C, living with angina. Thus, when C is substituted for B in moving from figure 2-4b to figure 2-4a, Watt should prefer A, the uncertainty of bypass surgery, to C, living with angina. If he prefers A to B and is indifferent between B and C, he should also prefer A to C.

At this point Watt decides to rethink his analysis. He concludes that Dr. Dwightson's assessment of his chances of surviving bypass surgery is the best medical judgment that is available. But what about his preferences for the three outcomes? Is he really indifferent between living with angina and a gamble that gives him an 80-percent chance of living without angina and a 20-percent chance of dying? Should  $V$  be perhaps 83 percent or 78?

It does not make any difference! The decision is the same whether  $V$  is 80 or 83 or 78 percent. In fact, as long as Watt is convinced that  $V$  is less than

90 percent, then he prefers to have the surgery. Thus, when rethinking his analysis, Watt decides to concentrate his attention on  $V$ , his indifference probability. And although Watt is not sure exactly where, between 75 and 85 percent,  $V$  ought to be, he is satisfied that  $V$  is indeed less than 90 percent. Thus, Watt is satisfied with his decision to have bypass surgery.<sup>1</sup>

### *Decisions and Uncertainty*

No decision maker can perfectly predict the future. Yet, for any decision you must make, your choice depends upon what you believe will be the future consequences of your current actions. If you are a manufacturing executive attempting to plan next year's production schedule, you cannot know for sure whether the price of a raw material will rise or fall, whether a competitor will introduce a new product, or what the level of consumer demand will be. You can make an educated guess, but you cannot know for sure. As Professor Robert O. Schlaifer of the Harvard Business School has written, "Virtually all important business decisions are made under uncertainty."<sup>2</sup>

When faced with uncertainty, it is difficult to make good predictions. In 1966, the Boeing Company decided to market the 747 based on its engineers' estimates of the costs of manufacturing the airplane. These estimates proved to be too low by nearly a half. Consequently, by mid-1975, although the company had received almost 300 orders for the plane, it had yet to recover its nearly \$1 billion in start-up costs. Explained William McPherson Allen, the retired chairman of Boeing:

I have the greatest confidence in the ability of Boeing to design good, sound airplanes and—along with this—its ability to produce them efficiently. I don't have much confidence in our ability to prophesy the costs.<sup>3</sup>

For public policy decisions, predictions are also important. Recognizing this, Congress has given the Congressional Budget Office the responsibility of predicting the cost of every piece of legislation reported out of the various committees of the Senate and House of Representatives. And financial costs of new policies are not the only consequences that need to be predicted. When Congress was deciding whether to establish the U.S. Postal Service, it had to predict not only how much the new, quasi-public corporation would cost to operate, but how well it would deliver the mail.

In government, as in business, accurate predictions are difficult to obtain. In their book on the implementation of public programs, Jeffrey L. Pressman

and Aaron B. Wildavsky observe, "Our assumptions about new public programs are far removed from reality. We assume that the people ostensibly in charge can predict the consequences of their actions and that often is not the case."<sup>9</sup>

The problem of uncertainty complicates personal decisions as well. Selecting a new job, purchasing a car or life insurance, and deciding whether to undergo open heart surgery all require that you make predictions about which you cannot be certain. Consequently, if your decision—be it personal, business, or governmental—is sufficiently important to warrant some analysis, you will definitely want to think systematically about the uncertainties involved. The predictions you make—the probabilities you assess for the various possible outcomes—can significantly influence your decision.

How probabilities can affect a decision is illustrated by an explanation suggested by syndicated columnist Joseph Alsop for the differences in French and American policies toward the Middle East in October 1974.

If you want to understand some of the more nasty recent developments, there is a simple place to start. It can be said on very high authority that the French government of President Valéry Giscard d'Estaing thinks there is close to a 100 percent chance of renewed war in the Mideast.

If you think that there is a 50 percent chance of the dam breaking, and the countryside therefore being drowned, your natural impulse is to try desperately to strengthen the dam. That has been, and is, the policy of Secretary of State Henry A. Kissinger.

In contrast, if you think the dam is absolutely sure to break, you snatch up what you can and head for the high ground. That is the French policy. . . .

But how do you react when you think there is a 75-percent chance of the dam breaking? Or a 90-percent chance? The probability of an event occurring can be anywhere from 0 to 100 percent; at what point do you switch from attempting to strengthen the dam to heading for the high ground?

How the decision maker assesses the probabilities is not the only factor affecting a choice complicated by uncertainty. How the decision maker values the various outcomes is also important. The third special prosecutor in the Watergate investigations, Henry S. Ruth, Jr., has suggested how different preferences for outcomes can result in different decisions about whether to prosecute a criminal case, even when there is agreement about the probabilities: "Some people say that if a prosecutor has a one percent chance of success he should proceed. I don't happen to share that."<sup>10</sup> Different decisions about whether to prosecute could result from different evaluations of the pluses of a conviction and the minuses of an acquittal when compared with the certain consequence of not prosecuting at all.

## The Basic Decision Dilemma

### The Prosecutor's Dilemma

When given a criminal case, a public prosecutor (or district attorney) has two alternatives: one that is risky, and one that is riskless. The riskless alternative is not to prosecute, for the outcome is certain: no decision. The risky alternative is to prosecute, for this can result in one of two possible outcomes: conviction, which is the best possible outcome, or acquittal, which is the worst. The basic features of the prosecutor's decision dilemma are quite simple, even if making the decision is not.

Indeed, a decision tree for the prosecutor's dilemma (figure 2-5) is identical to the one used to analyze the angina/bypass surgery dilemma. For both decisions there are two alternatives. One of these alternatives is riskless; it results in a certain outcome. The other alternative is risky; it can result in an outcome that is better or in one that is worse than the interjacent outcome of the riskless alternative. (In figure 2-5 and in other decision trees throughout this book, we place some descriptive information in square brackets under a branch. For example, [Risky] alternative and [Best Consequence].)

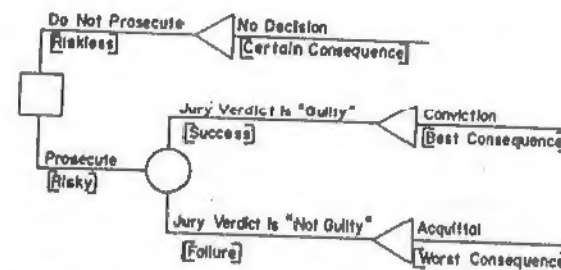


Figure 2-5. The Prosecutor's Decision Dilemma.

Obviously, the prosecutor's decision will depend upon his assessment of the probability of conviction and his preference for the three consequences. Watergate prosecutor Henry Ruth looked at it one way. In Dashiell Hammett's *The Maltese Falcon*, Sam Spade explained to Casper Gutman how other prosecutors view this same decision:

Bryan is like most district attorneys. He's more interested in how his record will look on paper than in anything else. He'd rather drop a doubtful case than try it and have it go against him."

Ruth might prosecute if the probability of success was 40 percent; Bryan

might do so even if that probability was 90 percent. Of course, the prosecutor's decision problem could be more complex. For example, for the risky alternative, prosecute, the prosecutor might want to consider a third possible outcome: a hung jury or a mistrial. There might be another decision alternative: plea bargain. Also, it might not be possible to consider the case in isolation from others; after winning the current case, the prosecutor might have to decide whether or not to prosecute an accomplice.

Similarly, the angina/bypass surgery dilemma involved many more factors than were incorporated into the original decision tree. In his first-cut analysis, Ollerton Watt ignored his concern for finishing his book and the possibility that the bypass operation might not cure his angina. If Watt had considered it important, he could have attached another consequence branch to each terminal node to indicate whether he would complete his book. Also, he could have considered another alternative: delay surgery until his book was finished. Indeed, he might have wanted to consider the uncertainty about whether he would ever be able to complete it. Finally, he could also have added another outcome branch to the uncertainty node that results from electing surgery, in order to incorporate the possibility that the operation neither succeeds nor fails, the consequence being that he lives, but with angina. A decision tree incorporating all these complications is shown in figure 2-6.

Whatever the complications, it is usually best to begin an analysis with a simplified definition of the problem, one that focuses attention on the essence of the dilemma. Then, if a first-cut analysis proves unsatisfactory, a second cut can be undertaken, incorporating those additional factors whose exclusion makes the first cut inadequate. (Various extensions of a simplified, first-cut analysis are examined in chapters 5 through 12.)

### The Basic Decision Dilemma

Like the prosecutor's and bypass surgery dilemmas, many decisions involve a choice between a riskless alternative on the one hand and a risky alternative with only two possible outcomes on the other. This is the simplest of all decisions involving uncertainty, yet it captures the fundamental reason many important decisions are dilemmas. Moreover, this simple, basic dilemma is a component of every more-complicated decision that involves uncertainty; consequently, it is called *the basic decision dilemma*. Similarly, of all the possible decision trees involving uncertainty, the one for the basic dilemma is the simplest; it has the least number of branches and thus is called *the basic decision sapling* (see figure 2-7).

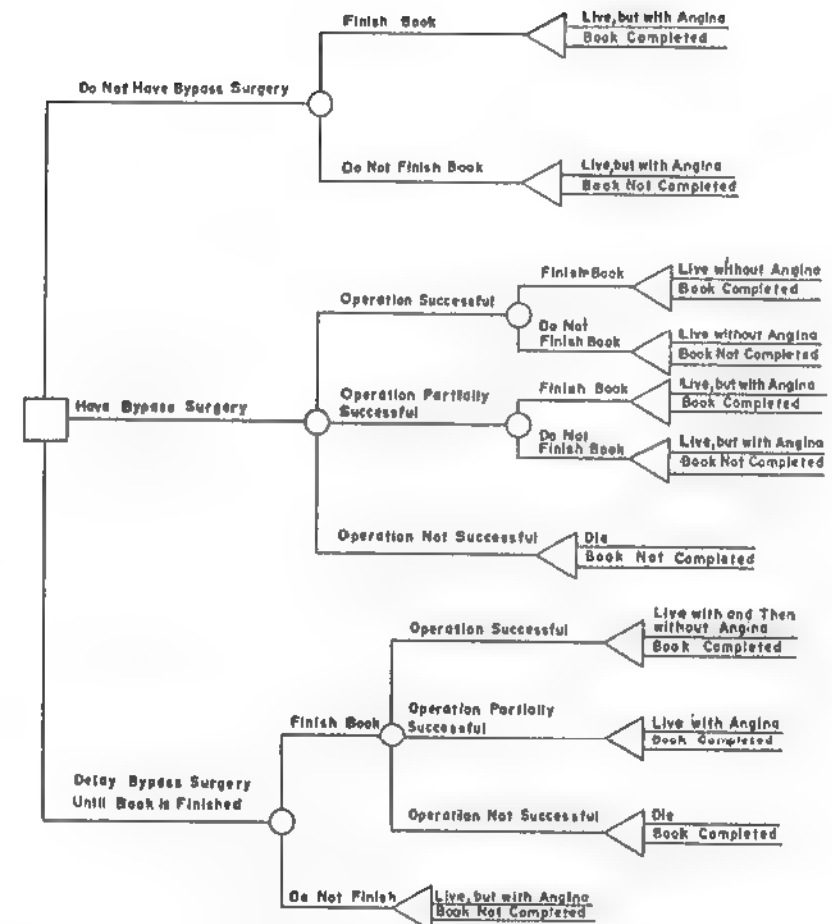


Figure 2-6. A Possible Second-Cut Decision Tree for Ollerton Watt's Angina/Bypass Surgery Decision Dilemma.

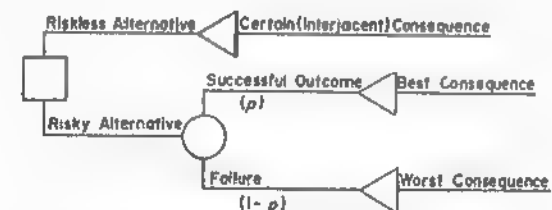


Figure 2-7. The Basic Decision Sapling.

The basic decision sapling has only two alternative branches. The riskless alternative leads to a certain consequence. The risky alternative leads to an uncertainty with two possible outcomes. There is a  $p$  chance of a successful outcome, which results in the best consequence attainable, and a  $1-p$  chance of a failure, which results in the worst consequence possible. The decision maker prefers the best consequence to the certain (interjacent) consequence, which he prefers in turn to the worst consequence. The dilemma is whether to gamble on winning the best consequence by choosing the risky alternative or avoid the chance of getting the worst consequence by selecting the riskless alternative. (Note: The probability of success,  $p$ , is usually expressed not as a percentage but as a decimal. For example, 0.75 rather than 75 percent. Thus,  $1-p$  becomes 0.25.)

There would be no dilemma if you preferred the certain consequence of the riskless alternative to *both* possible outcomes of the risky choice; in this case, you would obviously choose the riskless alternative. Similarly, if you preferred *each* of the two consequences of the risky alternative to the certain consequence of the riskless choice, there would be no problem; you would select the risky alternative. *The only reason there is a dilemma at all is because the certain consequence of the riskless alternative is not as good as the best consequence but is better than the worst.* (Note: the "risky alternative" is so named because the decision maker is uncertain about the outcome of this choice. If the probability of success,  $p$ , is almost 100 percent, the risk may not be very high, but this alternative is still the risky one.)

The quintessence of many decision dilemmas involving uncertainty is captured by the basic decision sapling. Indeed, numerous personal, business, and governmental decisions pose the basic dilemma. Moreover, many complicated decision problems can be decomposed into a series of structurally simple decision dilemmas of this kind. Because it is confronted so frequently (particularly in first-cut analyses) and because it is an essential building block for organizing your thinking about other decision problems, it is essential to understand how to analyze and resolve the basic decision dilemma.

### Preference-Probabilities

Despite the simplicity of the basic sapling, resolving the basic dilemma is not a trivial exercise. Whether a decision maker is using a basic sapling or a complex decision tree, making an intelligent decision requires him to integrate his judgments about two quite different factors: the chances of realizing the various outcomes, and his relative preferences for these outcomes. No matter

### The Basic Decision Dilemma

how simple or complicated the decision tree, the same judgments about uncertainties and preferences must be made. Both these tasks are demanding, in part because humans are simply not in the habit of clearly specifying their predictions and preferences. When confronted with decisions involving uncertainty, the human mind attempts to cope with the entanglement by focusing on one or maybe two characteristics of the alternatives while ignoring the others.<sup>12</sup> After all, even if some scheme could be developed to specify probabilities and another to specify preferences, how could these two rather different devices then be combined to make a decision? Making specific judgments hardly seems worth it if they lead you nowhere.

The beauty of using probabilities to specify preferences is that they lead you somewhere. If probabilities can provide a means to assess preferences, the results can easily be integrated with the probabilities used to assess uncertainties. Since both are probabilities, with unambiguous interpretations, whether they reflect judgments about uncertainties or preference is unimportant. The various probabilities can be combined (as described in chapters 5 and 6) and compared to help make the decision.

When analyzing a decision dilemma, it is necessary to specify one's relative preferences only for those outcomes that can possibly result from the decision. There is no need to compare these outcomes, such as "acquittal" or "live without angina," with the disaster of nuclear war or the blessings of eradicating cancer. To resolve the bypass surgery dilemma, the prosecutor's dilemma, or any other basic decision dilemma, a decision maker need only specify his relative preferences for the three possible outcomes. Indeed, it is really only necessary to make a single judgment about preferences: to decide how good the interjacent outcome is, compared with the best and the worst outcomes.

To do this, decision analysts define a hypothetical *reference gamble*.<sup>13</sup> Such a gamble has two *reference outcomes*: the *Best* reference outcome, which is often the best outcome that can possibly result from the actual decision, and the *Worst* reference outcome, which is usually the worst outcome that can result from the actual decision. (Hereafter, *Best* and *Worst* will be used to mean the best and worst reference outcomes of the reference gamble that is being used to help analyze the original decision.) The outcome of this reference

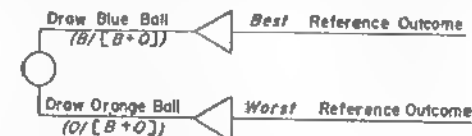


Figure 2-8. A Reference Gamble.

gamble is determined by drawing a ball from an urn. The urn might contain blue and orange balls, where drawing a blue ball would result in the *Best* outcome and drawing an orange ball would result in the *Worst* (see figure 2-8).

To specify a preference for any outcome that is interjacent to the *Best* and the *Worst*, the decision maker needs to decide what probability of drawing a blue ball from the urn makes him indifferent between the certainty of the interjacent outcome and the uncertainty of the reference gamble (see the hypothetical decision in figure 2-9). If the probability of drawing a blue ball is too low, the decision maker will prefer the interjacent outcome; if this probability is too high, he will prefer the reference gamble. Somewhere in between is his indifference probability.

We have chosen to call this indifference probability a *preference-probability*, for it is not only used to specify preferences but is also a probability.<sup>14</sup> Since the letter *p* has come to be standard notation for a probability, we have chosen the letter *V* to denote a preference-probability, for it indicates the value of a particular outcome to the decision maker.

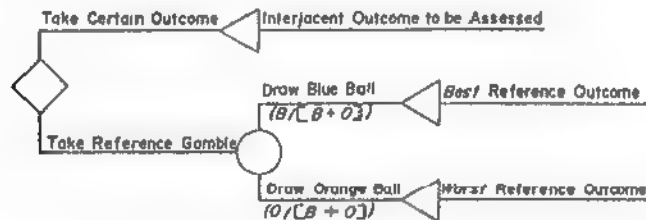


Figure 2-9. Using a Reference Gamble to Assess a Preference-Probability for an Interjacent Outcome.

A preference-probability provides a measure of a decision maker's preference for a particular outcome—an unambiguous statement about how the decision maker evaluates that outcome compared with the *Best* and the *Worst* reference outcomes. The scale for preference-probabilities goes from 0 to 1.0 (just as does the scale for any other probability). The higher a preference-probability is, the better the decision maker thinks that outcome is. If the preference-probability for an outcome is 1.0, that outcome is just as good as the *Best* reference outcome; if the preference-probability for an outcome is 0, that outcome is equivalent in value to the *Worst* outcome.

To see this, note what happens if the interjacent outcome of the hypothetical decision in figure 2-9 is replaced with the *Best* reference outcome. In this situation, what is the decision maker's indifference probability? Exactly 1.0. The only way that anyone can be indifferent between these two choices is if

## The Basic Decision Dilemma

there are only blue balls and no orange balls in the urn; that is, if the probability of drawing a blue ball is 1.0. (Similar logic indicates that the preference-probability for the *Worst* reference outcome must be 0.) Thus, any outcome the decision maker thinks is equivalent to his *Best* reference outcome also has a preference-probability of 1.0.

The virtue of preference-probabilities is that a decision maker can assess one for any outcome that is interjacent to the *Best* and the *Worst* reference outcome. Then the substitution principle applies: If a decision maker has assessed a preference-probability, *V*, for a particular outcome, he is indifferent between that outcome for certain and a reference gamble with a *V* chance of the *Best* and a  $1 - V$  chance of the *Worst*; consequently, this outcome can be replaced with the equivalent reference gamble. In fact, all the interjacent outcomes of a decision can be replaced with their equivalent reference gambles. The result of this use of the substitution principle is that the decision has been converted into one for which the only possible outcomes are the *Best* reference outcome and the *Worst* reference outcome. The decision can thus be made easily by selecting the alternative that gives the highest chance of getting the *Best* outcome.

This is what was done to resolve Ollerton Watt's bypass surgery dilemma. The interjacent outcome, living with angina, was replaced with what Watt decided was his equivalent reference gamble: an 80-percent chance of living without angina (the *Best*) and a 20-percent chance of dying (the *Worst*). Watt then decided that he preferred having bypass surgery, since that alternative actually led to a (real) reference gamble with a 90-percent chance of the *Best*, while not having surgery was equivalent (in his mind, at least) to a reference gamble with only an 80-percent chance of the *Best*. (In later chapters, we will discuss how this logic can be used to resolve dilemmas with uncertainties of even greater complexity.)

In a sense, Watt made his decision by comparing preference-probabilities for his two alternatives. His preference-probability for the riskless, no-surgery alternative (which guarantees him the interjacent outcome) is 80 percent; he assessed this using the reference gamble. Determining the preference-probability for the risky, surgery alternative is even easier; this alternative leads directly to a (nonhypothetical) reference gamble with a 90-percent chance of the *Best* and a 10-percent chance of the *Worst*. Thus, the preference-probability for the risky alternative is 90 percent, which is better than the 80-percent preference-probability for the riskless alternative. Using the best and worst outcomes of a basic dilemma as the *Best* and *Worst* outcomes for the reference gamble facilitates the analysis; for then the risky alternative leads directly to a reference gamble, and thus the only remaining task is to assess (1) the probability of getting the best from the risky alternative, and (2) the preference-probability for the riskless choice.

Actually, to resolve his dilemma satisfactorily, Watt did not have to specify

that  $p$ , his probability of surviving surgery, was 90 percent and that  $V$ , his preference-probability for the interjacent outcome, was 80 percent. All he really needed to do was determine which was greater. If Watt is convinced that  $p > V$ , then the risky alternative with a  $p$  chance of the *Best* is better than the riskless alternative. If, on the other hand, he decides that  $V > p$ , he prefers the riskless choice, since it is equivalent to a reference gamble with a  $V$  chance of the *Best*. As long as Watt can specify which probability is greater, he need not specify each separately.

To resolve decisions that are more complex than the basic dilemma, however, it is necessary to specify probabilities and preference-probabilities. Consequently, there is real value in learning to be as specific as possible about indifference points, even when analyzing a basic dilemma. Most people are not in the habit of thinking about indifference probabilities. Indeed, thinking about uncertainty in terms of specific probabilities is difficult. What really is the difference between an 85-percent chance and one of 90 percent? To be able to decide what probability makes you indifferent between a sure outcome and a reference gamble takes practice.

No one would really want to start off using decision analysis to make a life-and-death decision such as whether to have bypass surgery. People need to experiment personally with the principles of decision analysis, to develop their own analytical skills, to test and evolve their own decision-making style. Only after practice in thinking analytically about numerous minor and simple decisions will people develop the confidence necessary to use quick analysis to help make the truly significant decisions they face.

### Basic Decision Dilemmas in Business

Numerous decisions made by business executives are basic dilemmas. Whether a corporation should make a bid to take over another firm is one good example. In 1968, Chris-Craft Industries was considering an attempt to take over control of Piper Aircraft Corporation. To be successful, Chris-Craft would have to purchase 51 percent of the 1.64 million shares of outstanding stock in Piper. If, however, the takeover bid were unsuccessful, that is, if Chris-Craft were unable to obtain control of Piper, then it would be stuck with a significant amount of cash (it raised \$40 million for the tender offer) tied up in Piper stock, which it could not sell without lowering the price of the stock and suffering a large loss.

This corporate takeover decision can be described by a basic sapling (see

### The Basic Decision Dilemma

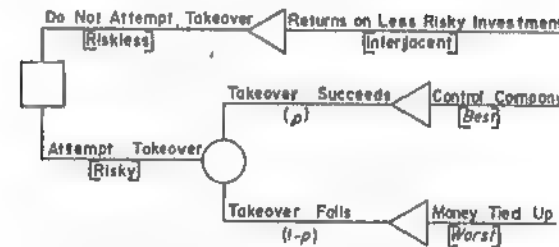


Figure 2-10. The Corporate Takeover Decision Dilemma.

figure 2-10). As with any other basic dilemma, the choice will depend upon how the firm assesses the probability of successfully completing the takeover, and upon how it appraises its relative preferences for the profits to be made from controlling the other company (the best outcome), the losses to be incurred if its money is tied up because the takeover bid fails (the worst outcome) and the returns that could be earned from an alternative, less-risky investment (the certain, interjacent consequence). Obviously, the profits to be made from controlling the target company must be larger than those available through other investments; otherwise, there would be no dilemma.

In 1969, Chris-Craft launched an effort to take over Piper. Piper, however, resisted and eventually organized a friendly or "white knight" takeover by Bangor Punta Corporation. Chris-Craft ended up with 45 percent of Piper's stock—not enough to control the firm—and over \$40 million tied up in the enterprise.<sup>11</sup>

In 1980, a consortium of Japanese firms, led by one of the nation's biggest trading companies, Mitsui & Company, faced a basic dilemma concerning a \$3.5 billion petrochemical plant it was building in Iran. Construction of the plant was begun in the mid-1970s but was delayed, first by the Iranian revolution and then by that nation's war with Iraq, during which the plant was bombed five times. Consequently, the Mitsui group, which had already invested \$1.4 billion in the plant, faced the decision of whether to attempt to complete the project (which had been 85-percent finished when the war broke out and could have been completed within six months). (See the basic sapling in figure 2-11.) The risky alternative, to invest still more funds in the plant, had two possible outcomes: The project is finished, the consequence being a profit (the best); or it is not finished, the consequence being a loss of several billion dollars (the worst). The riskless alternative, to cancel the project, had as a consequence a \$1.4 billion loss, which was interjacent to the other two. One executive commented: "If we continue the construction, we'll fall into hell. If we withdraw, we'll fall into hell."<sup>12</sup> (One of the complications that can



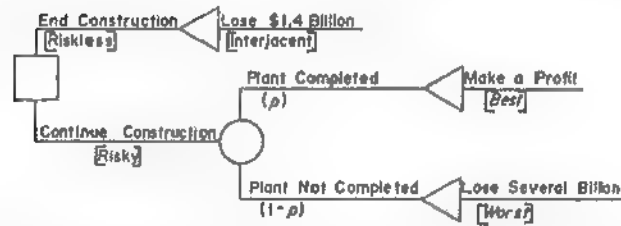


Figure 2-11. Mitsui's Iranian Petrochemical Plant Dilemma.

distort an analysis of this dilemma is the \$1.4 billion already sunk into the project. For a discussion of why "sunk costs don't count," see the appendix to chapter 8.)

A final example of a basic dilemma in business concerns the choice a number of book publishers faced in the late winter and early spring of 1976. Several journalists and writers were interested in preparing a campaign biography of Jimmy Carter, and numerous publishers were approached with proposals. It was clear that sales of a Carter biography would be high only if Carter won the Democratic presidential nomination, though in that case sales would be very high.

To resolve this basic dilemma (see the sapling in figure 2-12), each publishing house needed to appraise its relative preferences for three outcomes: the large profit to be earned from a biography of Carter the presidential nominee; the loss to be incurred from a biography if he were not nominated; and the normal profit that would be earned by publishing a less risky book. Further, because of the leadtime required to write and publish the biography, each publisher needed to assess the probability that Carter would win the Democratic nomination long before the results of the state conventions and primaries were in.

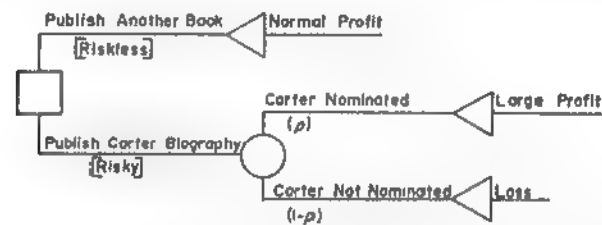


Figure 2-12. The Book Publisher's Dilemma.

## The Basic Decision Dilemma

All the major publishing houses reached the same conclusion: The chance of Carter capturing the nomination was too small to risk the investment. One writer started looking for a publisher in March 1976 and in mid-May was still being told that Carter did not have a good enough chance. One observer concluded, "The publishing industry was pretty much asleep about Carter." (More on the book publisher's dilemma in chapters 6, 7, and 9.)

## Basic Decision Dilemmas in Government

Public officials, too, are frequently confronted with basic decision dilemmas. There is, for example, the problem that Mount Baker in northwest Washington posed for the U.S. Forest Service in the spring of 1975. Mount Baker, a dormant volcano, was showing signs that it might act up again. Snow was melting, ice was shifting, and clay, ash, and sulfur were shooting into the air. Officials feared that, even if the volcano did not erupt, part of the Sherman Crater's rim might collapse, causing a massive mud slide. A University of Washington geophysicist observed: "This phenomenal increase in thermal activity on Mount Baker is all so very unusual. We have nothing in the historical record to compare it with. We have no way of knowing what will happen."<sup>1</sup> A spokesman for the U.S. Geological Survey provided a more useful assessment for Forest Service decision makers: "Geological Survey scientists have concluded there is a one-in-100 probability in 1975 that a mudflow will be generated on the slopes of Mt. Baker that will be capable of traveling the eight miles to Baker Lake."<sup>2</sup>

Despite the uncertainty, officials had to decide whether to close for the summer the recreation and resort areas surrounding Baker Lake. Again, the basic sapling is applicable (see figure 2-13). Structuring the decision as a basic

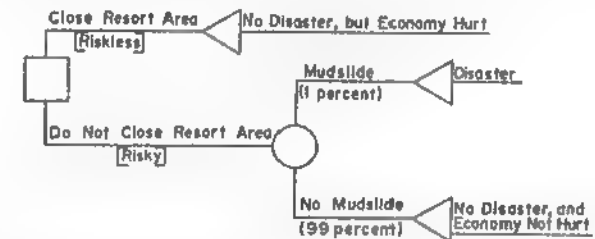


Figure 2-13. The Mount Baker Decision Dilemma.



decision dilemma could have helped Forest Service officials think analytically about whether to close the resort area. (They eventually did close it.) (More on the Mount Baker dilemma in chapter 5.)

When the Bay Area Rapid Transit (BART) system was being constructed in the early 1970s, public officials faced a basic dilemma of a different sort. Gophers in the San Francisco-Oakland area have a habit of eating electrical cables. BART officials needed to decide whether to encase their control signals in metal or in plastic sheathing. Metal was more expensive, but it was also known to be gopher-proof. And, of course, if the gophers ate through the plastic, all the cables would have to be replaced with the more expensive, metal casing (see figure 2-14).

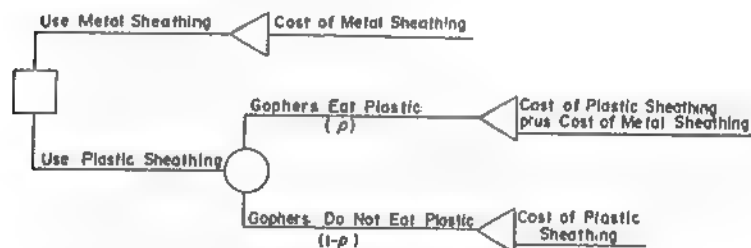


Figure 2-14. BART's Cable Sheathing Decision Dilemma.

BART officials gambled on the plastic sheathing—and lost. The gophers ate through it, and eight miles of cables had to be replaced at an additional cost of \$700,000. Thus, for this uncomplicated decision, the difference between the best and the worst outcome was \$700,000. Though the structure of the decision problem was simple, the outcome was not inconsequential.<sup>20</sup>

Another example of a basic dilemma in government is the National Aeronautics and Space Administration's problem concerning the launch-abort system for the space shuttle, which took its first flight in 1981. The one-man *Mercury*, two-man *Gemini*, and three-man *Apollo* spacecrafts all had special rocket or ejection-seat mechanisms to separate the astronaut compartment from the main rockets and fuel tanks in the event that the booster rocket malfunctioned during launch. The original (1971) design for the seven-person space shuttle included two extra solid-fuel rocket motors to abort the mission if a booster malfunction occurred during the first two-and-one-half minutes of flight. (After that, the space shuttle can fly back to earth just as on one of its returns.) But in 1973, NASA made a controversial decision to abort the space shuttle's launch-abort system.<sup>21</sup>

Clearly, this is a basic dilemma (see figure 2-15). The riskless alternative is

## The Basic Decision Dilemma

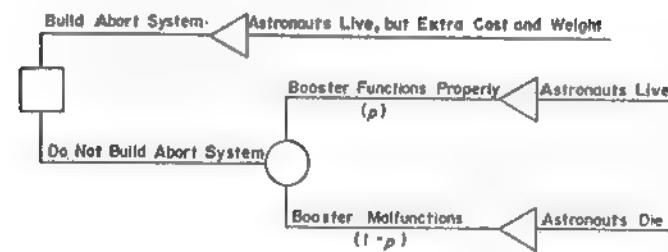


Figure 2-15. NASA's Shuttle Abort-System Decision Dilemma.

to build the abort system; this results in the certain (or at least almost certain) outcome that the astronauts will survive the launch, though there are additional expenses involved. This is why the interjacent outcome is not as good as the booster-functions-properly outcome, which results from the risky, do-not-build-abort-system alternative. Still, the certain outcome of the riskless decision is better than the worst, astronauts-die outcome of the risky alternative.

The probability of booster malfunction is quite low; of the first fifty-eight manned space flights launched by the United States and the USSR, none was aborted during launch, though each nation did have one near miss. Further, the additional cost, in weight and dollars, of building the launch-abort system is significant; the original abort system weighed 96,000 pounds compared with the 190,000 pounds that the shuttle, occupants, and equipment weigh (without the abort system). The decision is thus not obvious. It is impossible to build a perfectly fail-safe space shuttle. There are a lot of design decisions about what risks to take and what ones to avoid. Clearly, for this decision, the less the weight of the launch-abort system and the greater the probability of booster malfunction, the more apt people are to select the riskless alternative.

Other consequences of the various outcomes (such as the loss of the spacecraft and the failure of the mission if the booster malfunctions) could be noted but these do not influence the decision regarding whether to build the launch-abort system. There is another complication, however, that can influence the decision: If a booster malfunctions, will a launch-abort system work properly and save the astronauts' lives? Including this factor in the analysis requires more than a basic sapling; a second-cut analysis of this problem will be discussed in chapter 5.

Presidents and governors must resolve basic decision dilemmas when they decide whether to sign or veto a bill—the riskless alternative is to sign it; the risky choice is the veto, with the outcome being the best or the worst, depending upon whether the veto is sustained or overridden. Similarly, a representa-

tive from a "safe" congressional district must resolve a basic dilemma when deciding whether to seek reelection or run for the Senate—running for reelection is the riskless alternative; the risky choice is to campaign for the Senate, with victory being the best outcome, and losing (and thus being out of office) the worst. Throughout government and politics, as well as business and our personal lives, people must continually resolve basic decision dilemmas.

### *Applying the Concepts of Analytical Thinking*

If you are familiar with any of these specific decision dilemmas, you may be distressed because one or several factors that you consider important have been ignored. In some cases, complicating considerations have been consciously omitted from an initial analysis of the problem and will be introduced in later chapters. But this is the way that an analysis should proceed. To think analytically about any decision dilemma it is helpful to consider first only the essential features of the problem. Once the most significant aspects of the decision puzzle are understood, additional complexity can be introduced—but only if the additional insight gained is worth the time and resources that further analysis will consume. The initial process of simplification is crucial. As the quick analysis for the angina/bypass surgery dilemma illustrates, it is important to prune from the decision tree all the extraneous branches, which conceal the essential character of the dilemma, and then to undertake a complete, first-cut analysis, using only this simplified formulation of the problem.

The approach taken to resolve the structurally simple but perplexing angina/bypass surgery dilemma dramatizes how the five concepts of analytical thinking can be applied to help make decisions:

- Thinking means identifying why the decision is a dilemma—determining that, at its most fundamental level, the choice is between an essentially riskless alternative and a risky one with two possible outcomes.
- Decomposing means separating the decision into its alternatives, uncertainties, outcomes, and consequences—using a decision tree to break the dilemma down into its basic components.
- Simplifying means determining which factors are most important—concentrating attention on those few, key uncertainties, outcomes, and consequences that create the dilemma.
- Specifying means making unambiguous judgments about the values of the key factors—assessing judgmental probabilities for the uncertainties and preference-probabilities for the outcomes.
- Rethinking means considering whether your first-cut analysis was sensible—determining if you are satisfied with the judgments to which your decision is most sensitive.

## The Basic Decision Dilemma

These concepts provide the intellectual framework for thinking analytically about a wide variety of decision dilemmas. The application of these concepts to the bypass surgery dilemma has already introduced the fundamental ideas of decision analysis; this chapter has outlined all the principles necessary to analyze any dilemma created by uncertainty.

Much of this book is devoted to extending these simple ideas to decisions for which multiple uncertainties or multiple consequences create a dilemma that is structurally more complex than the basic dilemma. Still, the basic decision dilemma remains the core problem. It is useful for thinking about every decision presented in this chapter and for many more to come. After all, thinking analytically about decision dilemmas is a skill. It requires practice. Clearly, it is best to learn to sail a small dinghy with a single sail before you undertake to sail a ketch with a mainsail, mizzen, spinnaker, and two jibs. It is important to learn how to set a single sail under a variety of conditions—in light air or in a heavy breeze, when close-hauled or reaching and running—before attempting to adjust a number of different sails at the same time. Similarly, it makes sense to develop the ability to resolve basic decision dilemmas that require the determination of only a single preference-probability before attempting to evaluate the numerous preference-probabilities required to resolve more-complex dilemmas.



Mediate, Don't Litigate

Mc Graw Hill

CHAPTER

6

*Inside the Hearing Room*

(Bailliff bangs three times on courtroom door) "All Rise! This Court is now in session, The Honorable Thomas A. Watson presiding!"

That is how a typical courtroom hearing begins. Mediation begins differently.

"Hello. Are you Elizabeth Fields? I'm Tom Watson, the mediator. Will you follow me to the hearing room, please?"

Mediation's low-key opening is deceiving because it is really just the overture to a compelling drama about to unfold. What happens most days in court, by comparison, could be considered boring. Remember, mediation is not combat by hired gun; in a mediation hearing, it is the disputants themselves—the ex-lovers, the feuding neighbors, the boss and the fired employee—who in a few minutes will be nose-to-nose across the hearing table, with the chance at last to say what is on their minds.

As mediation sessions begin, the mediator has no need to get the disputants' attention because, typically, no one is speaking. Usually it is the first time they have seen each other in weeks or months. Now they sit, silently, across the table, staring at the mediator, waiting for him to explain the mystery of this place and this proceeding.

In this chapter, we will look inside the hearing room at the six stages of a typical mediation hearing. We will consider what is

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THE MEDIATION PROCESS

happening, and what you should be doing, during each of those stages in order to make your mediation as successful as possible.

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## Preliminaries

### Where You Sit

After your mediator greets you in the waiting area and escorts you to the hearing room, he will invite you to take a seat at the table.

Exactly what *is* the perfect shape for a mediation table? This is a subject that mediators debate vigorously in the pages of professional journals. Some prefer a rectangular table because they believe its resemblance to a typical boardroom table inspires confidence in the mediation process; others dislike the rectangular, because they think the hard lines encourage hard and inflexible bargaining positions. Some like a square table on the theory that its four equal sides suggest equality among the parties. Still others prefer no table at all, and instead like to have the disputants sit in upholstered armchairs around a coffee table or on a comfortable sofa facing the mediator.

Often, a mediation center will have several hearing rooms arranged differently. The mediator can choose which he or she prefers to use in a particular case.

There is no strategic advantage in jockeying for position; the mediator knows where he wants you to sit and, much like a host at a dinner party, will direct you to a seat. Do not balk or insist on another seat; this one is the mediator's call, and you should sit where he suggests.

A typical seating arrangement would place you at one side of a rectangular table, your opponent directly across, and the mediator at the head. If a lawyer or witnesses are with you, they will be seated next to you, along your side of the table.

### What the Mediator Knows About You

As your hearing opens, your mediator has only sketchy information about you and your dispute. He knows your name and address, the "nature of the dispute" as you stated it on the submission form, and the referral source, if any (such as City Court Judge, district attorney, etc.). If your dispute at some time involved a call to the police, a copy of the police report will probably be in the file, and the mediator would have glanced at it. But the mediator knows this information is only part of the story and forms no fixed opinions before the hearing begins.

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## Stage 1: Mediator's Opening Statement

The first lines in this drama are the mediator's, and they are known as the "opening statement." It is a short speech, usually delivered without notes, through which the mediator will try to demystify the proceeding for you by describing in simple terms the procedures and rules of the hearing. The mediator knows from memory the half-dozen or so key points that must be covered.

### Sample Opening Statement by Mediator

The opening statement below is typical of the kind you will hear at any public mediation center. In the left-hand column are the key points the mediator wants to make.

Introduces self	Good morning, my name is Tom Watson. I'm the mediator who has been assigned to your case.
Introduces claimant	Before we go any further, I want to make sure I have everyone's correct name and address. On my left is Elizabeth Fields of 225½

Introduces respondent and witness	Bristol Ave. Ms. Fields, you are the claimant in this hearing. And on my right is Mr. Richard Powell, 644 Eastbrooke Drive. Mr. Powell, you are the respondent. The witness you have brought with you is Mr. Robert Medden of 206 Savannah Boulevard.
Commends parties	I would like to start by commending each of you for choosing mediation as a way to resolve your dispute. By doing so, you have given yourselves the opportunity to solve this problem in a cooperative rather than an adversarial way and with greater flexibility, speed, and privacy than you would likely have in court.
States goal	The Center for Dispute Settlement is a nonprofit organization set up to help people in our community resolve their disputes through mediation. Our goal in this hearing is to find a solution to your problem that will be fair to both of you and workable in the long run. Our experience is that disputants who work in good faith during the mediation hearing have a very high success rate in reaching an agreement. My job is to help you do that.
Explains mediator's role	As a mediator, I have been trained and certified by the center to hear disputes such as yours. I have no authority to render a decision, and I can't send anyone to jail or impose any fines. My only job is to help you find your own solution to this dispute. I am completely neutral. I don't know either of you, and I know nothing about your case except its general nature as you described it on your submission forms.
No time pressure	One of the advantages of mediation is that we are under no time pressure. This hearing room is available to us for as long as we want

Explains procedure

Use of evidence

Discussion stage

Caucusing

it, and I am prepared to stay here as long as the hearing appears to be productive. If, as we go along, you want to take a break for a cold drink or a stretch, just let me know and we'll do that.

We'll begin today by having each of you make an opening statement to tell us what this dispute is all about from your point of view. Ms. Fields, as the claimant, will go first, and then Mr. Powell, as the respondent, will have his turn. While one of you is speaking, the other one will absolutely not be allowed to interrupt. If you need to make notes to remind yourself of comments you want to make later, there are pads and pencils on the table for you to use.

While each of you is speaking, you may notice me taking notes. If I write something, it doesn't mean I agree or disagree with what has been said. I am taking notes just to help keep track of the facts of the case.

While you are speaking, you can show us anything in the way of evidence you have brought with you, such as bills, letters, photographs, or whatever. The purpose of evidence is to help us understand your side of this dispute. The rules of evidence followed in court are not followed here, so I am willing to look at anything you want to show me. The other party will be able to look at it, too.

After the opening statements, we will begin to discuss the issues in dispute, and hear from any witnesses you have brought today.

During this discussion phase, you can each say whatever you like, but I will not allow any uncivil language or swearing.

At some point during the hearing, I may want to talk to each of you separately in what is

called a "caucus." If that happens, I will ask one of you to leave the room while I speak with the other party. Everything you tell me in a caucus I will keep confidential and not tell the other side, unless you give me specific permission to do so. If I spend longer in caucus with one of you than the other, it doesn't mean I am partial to one side, it just means it may be taking me a little longer to understand all the facts and the options available.

**Confidentiality** You have both signed a pledge to keep everything said and revealed in mediation confidential. I have taken a similar pledge to keep secret everything you say or show me. In fact, when the hearing is over, I will even throw away my notes. The Center considers this rule of confidentiality the most important rule of mediation and expects each of you to uphold it strictly.

**Consent agreement** As I said, our goal today is to find a solution to your dispute which both of you feel is fair and workable in the long run. If we can find such a solution, I will help you write it up in the form of what we call a "Consent Agreement." This will be an official document you both will sign and which we will have notarized. It will be a binding contract and may be legally enforceable in court.

**Questions?** Now, before we begin with your opening statements, are there any questions? If not, then Ms. Fields, you are the claimant, so let's begin with you. Please tell us what this case is all about.

## What the Mediator Is Trying to Do

Besides explaining how the hearing works, your mediator will use his opening statement to help achieve his first and perhaps most important goal: to gain control of the hearing.

He has temporary control at the start, of course, but that is not earned and soon can be lost. The first time your opponent calls you a liar and a disgrace to your profession, things quickly can get out of hand. What is to prevent one of you from leaving, or taking a swing at the other, or more likely, from the hearing degenerating into a shouting match or, worse yet, an endless grip session where nothing is accomplished?

Only by earning and keeping control can the mediator keep the hearing on track and moving forward. Yet, he cannot dominate or be too authoritative; if he were to do so, it would inhibit the disputants from taking the initiative to find their own solutions. Instead, your mediator attempts to gain control by earning your trust, respect, and confidence.

From first meeting you in the waiting room, everything your mediator says and does is designed with this goal in mind. He did it when he met you in the waiting room, by presenting a neat appearance and speaking politely and respectfully to you. And he will try to do it during his opening statement by speaking confidently, answering your questions fully, and otherwise demonstrating that he is intelligent, knowledgeable, unbiased, and of potential help—in short, someone in whom you can and should place your trust.

## What You Should Do

Listen carefully to the mediator's opening statement for how things will proceed and for any variations on normal rules, and then ask any questions that occur. Also, use the few minutes it takes for the mediator to make his statement to relax and become comfortable in the hearing room. It will soon be your turn to speak.



## Weapons Check

At some centers, particularly those that hear many disputes involving assault and harassment, the mediator will follow his opening statement with a "weapons check." He will ask if you are carrying any weapons and, if you are, instruct you to remove them from the hearing room and check them with the receptionist or other staff member. Both parties will then be required to sign a statement affirming they are unarmed.

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## Stage 2: Disputants' Opening Statements

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After the mediator's opening statement, witnesses are asked to leave the room. You may recall them later to confirm parts of your story, but the principal source of information about your story will be you, and it starts with your opening statement.

This is your chance, finally and without interruption, to tell your opponent and the mediator your view of the dispute. Consider how delicious this opportunity is: even if you had tried before mediation to negotiate a settlement directly with your opponent, you probably never had the chance to tell your side of the story without being interrupted or having to shout. Even if you were to go to court, you probably would not get such a chance until the case came to trial and your attorney called you to testify—but even then you would be interrupted by objections from opposing counsel and constrained to limit your testimony to the narrow legal issues in dispute.

But now in mediation, the floor is yours. No one will stop you. No one will object or try to twist your words. If your opponent interrupts to shout, "No, he's lying!" the mediator will quickly remind him he may not interrupt while you are speaking.

## What You Should Do

Address your opening statement to the mediator. Later on—if your hearing is going well—you should be speaking directly to your

opponent, but at this early stage speak to the mediator and look at him as you talk. This should help you keep calm by avoiding having to look directly at your opponent and also help establish a rapport between you and the mediator.

Unless the mediator invites you to use first names, address the mediator and your opponent as Mr. or Ms. Here are some other guidelines that may be helpful:

### 1. Tell Your Story Chronologically

Your task in your opening statement is to tell the mediator and your opponent what the dispute looks like from your point of view and how it has affected you. The best and simplest way to do this is to tell about your dispute in the order it developed.

Start by briefly describing the situation before the dispute began. In this way, you paint a picture of how the dispute has affected you by changing a good situation to a bad one. For example:

*Ms. Fields (the claimant):* "The trouble began in July of 1988. That's when I started being woken up at night by noise from parties that Mr. Powell had at his backyard pool. Our houses back up to each other. Before then, the neighborhood was very quiet; I could sleep with the windows open and never be disturbed by noise."

### 2. Use Dates Carefully

As you tell your story, be sure to have in mind the dates as closely as possible when events occurred. Your mediator will be working hard while you speak to place in historical order all that has transpired. Exact dates will help him do this.

*Ms. Fields:* "The first time I was woken up by noise from a pool party was the night of July 15 at about 2 a.m. I remember the date because the next morning I had to be up at 6 a.m. for an early flight to Chicago for business."

Showing the mediator you can be accurate with dates is also a good way of demonstrating to the mediator and your opponent that you are reliable when relating other information.

### 3. *Display Evidence as You Tell Your Story*

Display your evidence as it comes up in your story, rather than all at once at the beginning or at the end. For example:

*Mrs. Fields:* "As I mentioned, later that night some of Mr. Powell's party guests climbed over the fence into my yard and purposely damaged my car. I took the car for repair to Irwin's Garage on North Street. They did some body work on the hood and also had to replace the radio antenna. The bill was 432 dollars, and here is the receipt (shows receipt from auto shop).

"I also took a photo of the car to show the damage (shows photo of dents in hood)."

The mediator will look at your photos and other evidence and then pass it to your opponent to view, but your opponent will not be allowed at this time to comment on it or ask any questions because the floor is still yours. The mediator, too, will likely hold any major questions or comments about your evidence until later in the hearing. He doesn't want to disturb your train of thought in telling your story.

### 4. *Do Not Conclude with a Demand*

You may have the urge to wind up your opening statement with a strong demand, such as "I insist Mr. Powell pay me the 432 dollars for the damage his guests did to my car and also pay for repairs to my backyard fence." But to do this would be a mistake. Nearly everyone who goes through mediation decides during the hearing that they should change their settlement position from what it was initially. For example, you may think you know what your opponent wants and what he is willing to give up, but your assumption may be wrong. You may learn during your opponent's opening statement that you could have asked for more and gotten it in exchange for something you would not mind giving up. But if you lock yourself into a settlement position during your own opening statement, it makes it that much harder to change your position later without losing face.

### What Your Mediator Is Doing

While you are making your opening statement, you may have the feeling that no one outside family and closest friends has ever listened to you quite as attentively or with as much understanding as your mediator is listening to you now. This is the way it is supposed to be.

Earlier, your mediator used his greeting to you in the waiting room and his opening statement to show he is intelligent, reliable, and respectful, and thus to build trust. Now, he uses your opening statement—not only to grasp the facts of the dispute—but also to show he is a good listener, that he cares about your problem, and not only understands it but understands your emotional reaction to it. This is called "empathic listening," an important skill your mediator uses to help build your trust in him and thus help him earn control of the hearing.

Professors Nancy H. Rogers and Richard A. Salem have written:

Empathic listening means listening for how the parties feel as well as to what they are saying, and providing verbal and nonverbal (eye contact, facial expression, body position) feedback that lets them know the mediator understands and cares about both. An empathic mediator conveys respect to the parties, doesn't register approval or disapproval of what is being said, refrains from providing unsolicited advice and does not interrupt.<sup>1</sup>

Though the mediator's primary job is to listen while you speak, he will also help you out as the situation may require. Few disputants are able to tell their story smoothly from beginning to end without a little help. Without interrupting the flow of your opening statement, the mediator may use a few devices to assist you, as needed:

- *Helping questions:* these are sort of "stage prompts" the mediator may use to help you get the facts straight. For example, "Excuse me, Ms. Fields, let me be sure I understand, that event happened in August, before you called the police?"

- *Open-ended questions:* the mediator may interrupt to ask a neutral, "open-ended" question designed to remind you of a part of your story that may prove important but which you may have forgotten to tell. For example, "Ms. Fields, do you often need to get up for work very early in the morning?" These questions can also be used to probe for underlying issues. For example, "Did you and Mr. Powell ever have any conversation that was not about the noise problem?"

- *Venting:* your mediator knows how much frustration or anger you may feel toward your opponent and during the opening statements may waive the usual rule against uncivil language in order to let you vent some of your anger.

- *Echoing and summarizing:* by repeating back to you in his own words what he has heard you say, the mediator both assures himself he has understood the facts of your story and gives you the chance to correct any misstatements you may have made.

*Mediator:* "OK, Ms. Fields, let me see if I understand what you are telling us about your dispute with Mr. Powell. Since he opened his backyard pool last July, you have been disturbed from your sleep at least once each week by loud noise from parties held at his home." (The mediator summarizes the major facts of her story.)

*Ms. Fields:* "Yes, that's the situation."

### Your Opponent's Opening Statement

Along with the mediator, you have a primary task—while your opponent makes his opening statement—of listening carefully. In most cases, you will hear things about your dispute you never heard before, such as your opponent's emotional reaction to it, his perception of how you responded to settlement overtures he made, or a statement of what he really wants out of the case. You may also hear things that upset you:

*Mr. Powell:* "Ms. Fields has a reputation around the neighborhood as a real complainer."

If he embellishes the truth or insults you, try not to interrupt; doing so will only annoy the mediator. Make a note of the statement that upsets you and raise it later if it still seems important.

Listen, as the mediator will be doing, for clues to what it is that is important to your opponent:

*Mr. Powell:* "You know, I would like to feel I can enjoy my own yard without having neighbors listening to my guests or rushing to call the police the second things get a little loud. I like my privacy, too."

You might also discover a few bargaining chips you didn't know you had:

*Mr. Powell:* "If she's so concerned about being a good neighbor, why doesn't she keep her dog on a leash like she's supposed to, and out of everyone's trash?"

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### Stage 3: Discussion

After opening statements are concluded, it is time for you and your opponent to start talking directly to each other. The take-off point for the discussion is often a comment one disputant wants to make on something the other party said during the opening statement.

*Ms. Fields:* "Mr. Powell, I don't know where you got the idea that I have a reputation in the neighborhood for being a complainer, but I can tell you that is just not true. Since I moved into my house five years ago, you are the first person who has given me any reason to complain about anything."

There is a tendency for things to get out of hand during these early stages of discussion, and so the mediator will normally try to stay in control. He will remind disputants about not using uncivil language and will discourage character attacks. Instead, he will try

to help the disputants discuss in general terms the various issues in dispute.

The first thing your mediator may do is attempt to put the issues in some kind of order. A common practice is to tackle the easiest ones first in order to build up the disputants' confidence in the mediation process and in their own ability to address their dispute in a reasonable and productive way.

*Mediator:* "I can see from your opening statements we have several issues to talk about. There is the damage to Ms. Field's car which she believes was caused by Mr. Powell's pool guests, then the more general question of noise from the pool parties, and then some concern about Ms. Fields' dog running loose and getting into trash. Let's start with the specific problem of damage to Ms. Fields' car."

### What the Mediator Is Doing

This is a time for narrowing and broadening. On the one hand, your mediator will try to narrow the number of issues in dispute: Can any complaints discussed in the opening statements be dismissed because they are no longer relevant or were simply based on misinformation? If so, it will be easier now to focus on the other issues. On the other hand, the mediator will probe to see if any of the issues raised need to be broadened to include underlying issues—such as hidden interpersonal conflicts—not disclosed by the parties.

Beginning with this stage of the hearing and continuing through to its conclusion, your mediator will be engaging in several types of activity. Mediator Christopher Honeyman has observed five activities performed by mediators in labor disputes, and these seem to apply as well to the more general kinds of mediation with which we are concerned. Honeyman's five categories of mediator activity are:

1. *Investigation:* in searching for the facts behind the dispute, sometimes the mediator finds information the disputant did

not want to give, or demonstrates potential holes in a disputant's point of view.

2. *Demonstration of empathy:* by showing a willingness to hear and discuss matters of concern to the disputants, even if not technically relevant to the dispute, the mediator builds trust and helps engender a cooperative attitude.

3. *Persuasion:* slowly at the beginning, and then more intensively as the hearing progresses, the mediator may encourage disputants to embrace one or more possible terms for settlement.

4. *Invention:* if no workable options for settlement emerge from the disputants, then during the later stages of the hearing the mediator may propose some of his own creation.

5. *Distraction:* the mediator will often try to relieve tension during the hearing by use of humor, anecdotes, or just switching to other issues (one mediator described this as the "vaudeville element" of mediation).<sup>1</sup>

During the discussion stage, the mediator will try to help you and your opponent begin to approach your dispute in a cooperative, rather than competitive, way. On a very simple level, for example, instead of asking, "Ms. Fields, what would you settle for on this damage issue?" the mediator may ask, "Ms. Fields, can you think of some ways this issue possibly could be resolved?"

### What You Should Do

Primarily, this is the "research" part of your hearing. Your opponent told his story the way he wanted to during his opening statement, but undoubtedly he failed to answer some questions that have been troubling you. Ask the questions now; this is the time to explore what went wrong between you.

*Ms. Fields:* "One thing I don't understand, Mr. Powell. When I called your home to complain about the noise, why didn't you show me the courtesy of taking the call yourself and talking with me about the problem? Instead, you let one of your guests handle it. Why?"

In the later stages of the hearing, you will be constrained by the mediator to put aside the past and focus on the future. Thus, if you have questions about your opponent's past behavior, ask it of him directly now.

Explore all the possible issues. Like the mediator, you will need to understand as much as you can about the facts and the players in this dispute to help you formulate realistic settlement ideas. Though you are, obviously, very close to the dispute, there may be facets of it about which you have little information.

*Ms. Fields:* "Tell me, Mr. Powell, what kind of schedule do you generally keep at your house? How often do you use the pool in the summer? Are these social gatherings, or do you entertain business guests, too?"

Try to make your opponent see how the problem has affected you. You may have done some of this in your opening statement, but this is a good time to reemphasize, as needed.

*Ms. Fields:* "Do you know what it is like to go to work on three hours' sleep, Mr. Powell? Let me tell you something about the kind of work I do. Three mornings a week at 8:15 a.m. I have to chair a meeting of 12 department heads," etc.

Finally, listen carefully to your opponent. As you did during his opening statement, try to discern from the discussion what his real needs are and what he is seeking from mediation.

### Calling of Witnesses

Early in the discussion stage, the mediator may suggest that it would be useful to hear from the witnesses. He will call them, one at a time, back into the hearing room and ask them to tell what they know about the dispute. As the disputants were allowed to make their opening statements without interruption, so the witnesses are given a chance to say what they came to say:

*Mr. Powell's Witness:* "I was at the party in July where Mr. Powell's neighbor says she called to complain about the noise and we were rude to her and then climbed over into her yard and damaged her car. But you should have heard how nasty she was when she called and some of the language she used. I wouldn't even repeat it here. If she'd asked us nicely to turn down the music we would have. Anyway, I didn't see anyone go over into her yard. Most of the people at the party—we all work together—they're not the kind of guys who would purposely smash someone's car. She's got the wrong idea about us."

If you have any questions of the witness, you can ask them directly. The mediator may ask a few questions, too. After that, the witness is dismissed and told he can go home. Witnesses in mediation hearings are seldom recalled because the rest of the hearing focuses exclusively on the two disputants.

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### Stage 4: The Caucus

At this point in the hearing, your mediator will likely take advantage of one of mediation's most innovative features: the caucus.

*Mediator:* "I would like to meet now with Ms. Fields for a private caucus. Mr. Powell, would you mind sitting in the waiting room and I'll come and get you when we're done." (Respondent, Mr. Powell, leaves the hearing room.)

The caucus, which is a private meeting between you and the mediator, gives the mediator a chance to talk with you more informally and more candidly than he could in the presence of your opponent. He may assume a more relaxed posture, taking off his jacket and rolling up his shirt sleeves. And he may step over the line of strict impartiality just a little to tell you he genuinely sympathizes with your predicament and hopes a solution can be found.

*Mediator to Ms. Fields:* "Well, I can see you've been under tremendous stress because of this situation. I really hope we can find a way out of this for you so that you can get some sleep."

In caucus, you may be probed, cajoled, and challenged by your mediator. He may probe to find additional facts about your story that may reveal underlying interests. He may want to know what your bottom line really is. He may point out some weaknesses or holes in your story in order to create some doubt in your mind and help you bring your expectations in line with reality. He will not, however, ridicule or find fault with your past behavior. He may "translate" for you what he thinks your opponent is trying to tell you. And he will certainly challenge you to think of new options for settlement that might satisfy both you and your opponent.

Dr. Vivian Einstein, author of *Conflict Resolution*, lists the following as among the questions a mediator is likely to ask a disputant during caucus. "All these questions," Dr. Einstein writes, "will help the mediator get at the parties' real interests and may generate some excellent solutions."

- What do you really want to happen?
- What do you think is the proposal to which both of you most likely would agree?
- If you were in the other person's shoes, how would you feel?
- What would you do?
- What will you do, if both of you do not reach an agreement?
- How much will not agreeing cost you?
- How would it feel to walk away just now, with the whole matter settled satisfactorily?
- What are some fair ways of settling this problem, fair to you and to the other side?

Perhaps the most important questions the mediator may ask during caucus are those beginning with "What if . . . ?" In other words, posing to you the terms of a hypothetical settlement: What if your opponent did X, would you do Y?

*Mediator:* "Ms. Fields, what if Mr. Powell agreed to pay you for half the damage to your car and also agreed in writing to move all his parties indoors after midnight? How would you react to that?"

### What You Should Do

To take full advantage of the opportunities caucusing presents, you need to be open and honest with your mediator. If there is some matter about which you have not been able to be entirely truthful in the presence of your opponent, tell your mediator the full story during caucus.

*Ms. Fields:* "Look, I'm not 100 percent sure the damage to my car hood was caused by the people at Mr. Powell's party; it might have been there already. If he would just pay me for the cost of replacing the antenna—I think it was about 200 dollars—I'd be satisfied."

Ask questions. If there is any aspect of the hearing you are not understanding, or you are not sure about something the mediator or your opponent said, bring this up during caucus.

Float some trial balloons. Pose your own "What if . . ." questions. You may not have wanted to suggest an idea for settlement during the hearing for fear of looking weak or too eager to settle, but the caucus is the time to try the idea out on your mediator. If it holds any promise, and if you want him to do so, the mediator will be glad to present it to your opponent as if he, and not you, thought of it.

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### Stage 5: Negotiations

If your mediation is working, it should begin to show now. After the initial, generalized discussion of Stage 3, and the honest exchange with the mediator during caucus, disputants now are fo-

cused on a narrow range of issues. They are forward-looking, searching for workable settlement terms that will satisfy their own and their opponent's real interests.

Often, the relationship between disputants has begun to change, too. Not only has their negotiation style changed from competitive to more collaborative, their perceptions of each other are more realistic. Mediator Anne Richan has compared this stage of the hearing to "watching a wall come down brick by brick, as the disputants confront each other with all the things that have been bothering them and discover that the other is not an inhuman tormentor."<sup>4</sup>

### What the Mediator Is Doing

If you and your opponent are able to conduct your own negotiations, the mediator at this point will be glad to take a back seat. If not, he may be an active orchestrator of your negotiations, proposing new ideas for settlement and using information he learned in caucus to cue you when changes in bargaining positions might be helpful. If needed, he may call another round of caucuses, or perhaps caucus with just one disputant again. All the while, your mediator is listening carefully to be sure that:

- negotiations stay focused on the real issues in dispute
- negotiations are not starting down a path that may lead, in his assessment, to an unfair or unworkable settlement
- there are not any new issues emerging that may need to be addressed more fully before negotiations can proceed

### What You Should Do

"This is the time to reorient yourself to problem solving the "mediation way." This means you need to:

#### 1. *Let Go of the Past and Look to the Future*

Shift your concern from who is to blame to how you and your opponent are going to reorder the future so that the problem is solved and does not recur. In the dispute we have been discussing,

for example, Ms. Fields' anger over past incidents is far less important than her need for some assurance that she will be able to sleep undisturbed in the future. This is what she should be most concerned about during negotiations.

Shifting your concern in this way will help you redirect your priorities so that you know where to concentrate your energies while negotiating. It will help you let go of nonproductive issues that are backward-looking, such as insisting that your opponent admit he was wrong. You could insist that your opponent do so before continuing with negotiations, but if you do, your mediation session is likely to collapse because your opponent will prefer to walk away than admit guilt. Mediation and fault-finding are just not compatible.

#### 2. *Be Prepared to Share Responsibility*

In most (but not all) disputes there is some shared responsibility for the problem; rarely is one party 100 percent right and the other all wrong. In some cases, for example, though one side is at fault for the initial act (Mr. Powell's noisy pool parties), the other side's response (Ms. Fields' abusive telephone call) exacerbates the problem and itself becomes part of the dispute.

#### 3. *Focus on Your Interests, Not Your Rights*

You go to court to insist on your rights; in mediation, you try to protect your interests. These are not necessarily the same thing. Again, to use our illustration, Ms. Fields may have a legal right under the local noise code to insist that her neighbor be quiet after 11 p.m. Even if the police would enforce the code (which they probably lack the manpower to do), the 50-dollar fine that may be levied against Mr. Powell would do little to assure Ms. Fields of a good night's rest. All it might do, in fact, would be to push Mr. Powell to insist on his rights under the leash law and seek a fine against Ms. Fields for letting her dog run free.

In this case, as in many others, the parties' interests are broader than their rights. Here, both have an interest in enjoying their homes—whether by sleeping undisturbed or by entertaining guests without harassment. Both should be willing to give up a little of their "rights" in favor of protecting their overriding interests.



#### 4. *Be Flexible*

Let go of preconceived ideas about how the dispute should be resolved and instead be open to creative solutions that may satisfy your needs just as well. This means giving some consideration to your opponent's needs as well as your own.

If you need to change your position in front of your opponent and feel that by doing so you will lose face, blame it on the mediator. In fact, use the mediator in whatever way you need to adopt the positions that will get you the settlement you want. Use him as a scapegoat; put words in his mouth. Don't worry about incurring his anger or hurting his feelings. He can take it; it's part of the job.

*Ms. Fields:* "I honestly feel you owe me the money for the damage to my car hood, but I'm tired of the way the mediator is pushing me on this, so if you agree to pay me for the antenna, I'll accept it as payment in full."

More positively, you can also simply attribute your change in position to the persuasiveness of the mediator.

Finally, if your dispute is one where you and your opponent are going to have some kind of continuing relationship—as family members, business associates, or neighbors—now is the beginning of that new relationship. This is probably the first time since your dispute began that you are dealing together in a positive and constructive way. Take advantage of this opportunity. Show your opponent that dealing directly and honestly with you will pay off. Though the circumstances may make it difficult, try to be respectful, polite, and as far as possible, accommodating to the needs of your opponent.

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### Stage 6: Closure

"Closure" occurs at the moment when you and your opponent say "yes" to a proposed agreement. Mediation hearings tend to speed

up as this point nears. Disputants are speaking directly to each other. The mediator is also more direct in proposing refinements to possible terms of settlement. Everyone is intimately familiar with the issues, and so a kind of shorthand language develops that helps the discussion speed along to conclusion.

Your mediator will be listening carefully to detect the first instance when a package of terms for settlement emerges from your negotiations.

*Mediator:* "Ms. Fields, Mr. Powell, if I'm hearing you both correctly, I think you have reached agreement on all the major issues. I've tried to write them down in a very rough format. Let me read them to you and you tell me if I have it straight:

"On the issue of car damage, Mr. Powell would be willing to pay Ms. Fields 200 dollars, plus 15 dollars for the cost of cabs she had to take on two days when her car was being repaired.

"On the noise issue, Mr. Powell is willing to turn off any amplified sound, including stereos and radios, in his backyard by 11 p.m. on weeknights and by midnight on weekends, and will be responsible for keeping his guests quiet if they continue to use the pool after those hours.

"Ms. Fields, you will agree to call Mr. Powell directly, before calling the police, if you are disturbed again at night.

"On the dog issue, Mr. Powell would agree to call Ms. Fields directly, before calling police or dog control officers, if he thinks her dog has disturbed his trash barrels, soiled his lawn, or in any other way disturbed his property."

#### What the Mediator Is Doing

As he did during the negotiation phase, the mediator is testing the tentative terms of settlement against his sense of whether they are fair to the parties and hold reasonable promise of being workable in the long run. He is also trying to recall everything said during the hearing to be sure there were no underlying issues that he may have forgotten that would threaten the agreement. Also, he is help-

ing the parties strike a good balance between a set of terms that are specific enough to handle reasonably foreseeable problems while not being so overly detailed that they would become too cumbersome to be workable.

### What You Should Do

You, too, should be testing in your mind how satisfied you would be with these tentative terms of settlement. Remember that it is a package; you may have to give up a little, here, in exchange for something else, there. If you want, you can request a caucus with the mediator to give yourself a chance to talk over the proposed terms and get his assessment of how they would affect you.

You should consider as well how realistic this proposed settlement would be. If you are Ms. Fields, for example, are you really willing to tolerate some noise from Mr. Powell's home until 11 p.m. in exchange for quiet thereafter? If awakened at 2 a.m., are you willing to take the trouble of reaching Mr. Powell on the phone rather than just calling the police? And if your dog does disturb Mr. Powell's trash, are you willing to clean it up as intimidated by the agreement?

Also, don't agree to things you are not really willing to do or that would be impossible to perform. This would include agreeing to pay more money than you can afford, controlling the behavior of your relatives, etc.

If the proposed terms don't look favorable enough or realistic, this is the time to say so. Do not wait until the agreement is in writing and everyone is standing around waiting for you to sign your name. At that point, the compulsion to sign will be too great and you will end up signing an agreement you don't believe in.

When the mediator hears you and your opponent both say "OK," he will seize the moment.

"Then we have agreement," he says.

Closure.

### AT A GLANCE

#### Six Stages of a Mediation Hearing

1. Mediator's opening statement
2. Disputants' opening statements
3. Discussion
4. Caucus
5. Negotiation
6. Closure

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# ESSENTIALS OF NEGOTIATION

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Roy J. Lewicki

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**IRWIN**

Chicago • Bogotá • Boston • Buenos Aires • Caracas  
London • Madrid • Mexico City • Sydney • Toronto

C H A P T E R

## 10 THIRD-PARTY INTERVENTIONS

In Chapter 5, we reviewed a number of techniques that negotiators themselves can use to break deadlocks, reduce unproductive tension and hostility, and return negotiations to a productive pace. However, frequently the parties cannot effectively implement these techniques by themselves. As we will explain, when the "heat of battle" overwhelms negotiators, when mistrust and suspicion are high, or when the parties cannot take actions toward defusing conflict without those actions being misinterpreted and mistrusted by others, third-party involvement may become necessary. This chapter will describe the typical roles that third parties play and how those roles contribute to conflict resolution.

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### Adding Third Parties to the Negotiation Process

The essence of negotiation entails parties working face-to-face, without the direct involvement of others. It is exactly this sort of direct, personal involvement that creates the understanding of the issues and the personal commitment necessary to manage conflict constructively. As long as this direct form of negotiation proves to be productive, it is best to allow it to proceed without the involvement of other parties. As we say throughout this book, however, negotiations are often tense, difficult, and generate more heat than light. Negotiation over critical issues may also reach an impasse free of anger and resentment, but an impasse, nevertheless; the parties are unable to move the process beyond a particular sticking point. At these points, third-party intervention may be a productive (if not the only) way to break deadlocks and get the negotiations back on track.

### Advantages and Disadvantages of Third-Party Intervention

At a minimum, third parties can provide (or even enforce) the stability, civility, and forward momentum necessary for the negotiators to readdress the problems at hand—problems central to the negotiation, and problems that have stalled or derailed it. Depending on the nature of the third party and the type of intervention involved, third-party interventions can provide a number of advantages:

- Breathing space, or a cooling-off period.
- Reestablished or enhanced communications
- Refocus on the substantive issues.
- Remedy or repair for strained relationships.
- Establishment of, or recommitment to, time limits.
- Salvaging the “sunk cost” of stalled negotiations.
- Increased levels of negotiator satisfaction with, and commitment to, the conflict resolution process and its outcomes.

Even if the relationship between the parties is so damaged that future exchanges would be highly problematic, third parties may provide vehicles and processes that enable some degree of hostility abatement and closure on the issues at hand.

However, third-party interventions may also present certain disadvantages:

- Evidence of a failure of the negotiation process, even if only temporarily.
- Failure to grow, to build relationships, or to become more adept in managing their own lives and conflicts.

### Third-Party Interventions: When and What Kind?

**When Is Third-Party Involvement Appropriate?** Serious negotiators must make a realistic effort to resolve their own disputes. In general, though, negotiators initiate third-party interventions when they believe they can no longer handle the dispute on their own. When one negotiator requests intervention, it must be acceptable to all the disputing parties. If only one party recognizes a need for third-party intervention, he must usually persuade the other party to go along. However, interventions may also be *imposed* by someone with power or authority over the negotiators when a failure to resolve the dispute threatens to lead to significant costs for the affected organization or for individuals affected by (but unable to act on) the dispute being negotiated. Negotiators might seek third-party involvement if they experience or observe:

- Intense emotions that appear to be preventing a settlement.
- Poor quality or quantity of communication, beyond the ability of the negotiators to fix (see Chapter 6).
- Misperceptions or stereotypes that hinder productive exchanges.

FIGURE 10.1

Categories of Third-Party Intervention

		Level of negotiator control over outcome	
		Low	High
Level of negotiator control over procedure	Low	Autocracy	Mediation
	High	Arbitration	Negotiation

Adapted from B. H. Sheppard, “Third Party Conflict Intervention: A Procedural Framework,” in *Research in Organizational Behavior*, Vol. 6, ed. B. M. Staw and L. L. Cummings, (Greenwich, CT: JAI Publishing, 1984), pp 141–90, and from J. Thibaut and L. Walker, *Procedural Justice, A Psychological Analysis* (Hillsdale, NJ: Lawrence Erlbaum Associates, 1975).

- Repeated negative behaviors (e.g., anger, name-calling, blaming others) creating barriers between the parties.
- Serious disagreement over the importance, collection, or evaluation of data.
- Disagreement as to the number, order, and combinations of issues under dispute.
- Actual or perceived incompatible interests that the parties are unable to reconcile.
- Unnecessary (but perceived-as-necessary) value differences that divide the parties.
- Absence of a clear, common negotiation procedure or protocol, or not using established procedures (such as caucuses or cooling-off periods) to their best advantage.
- Severe difficulties initiating negotiations or “bargaining through” an impasse<sup>1</sup>

**What Kind of Intervention Is Appropriate?** In third-party processes, typically, negotiators give up their control over either the dispute process (the *how* of negotiation) or the dispute outcome (the *what*) of negotiation. Sometimes they give up control over both of these, and sometimes they surrender control over neither one (see Figure 10.1).

Surrender of neither process nor outcome control constitutes the negotiation process, as addressed by most of this book; surrender of both constitutes a complete withdrawal from negotiation and dependence on the peremptory involvement of an otherwise uninvolved person. Of the two mixed situations (arbitration and mediation, both discussed in detail later in this chapter), mediation is third-party involvement that controls the process but not the outcome. Mediation, then, is *less intrusive* to the negotiations in that negotiators surrender control over the process, but they can still control the outcome (the actual agreement). If the primary rule of third-party intervention is “Don’t involve third parties unless necessary,” then the first corollary of the rule is “If involvement is necessary, use a minimally intrusive intervention” such as mediation.

As for invited interventions, they support the needs of negotiators who desire guidance or procedural assistance but who wish to maintain control over the choice and implementation of the ultimate outcome. Battle-weary negotiators may feel they just want an end to the dispute, but abdicating control completely to a third party will likely have a number of detrimental effects. Choice of invited intervention may also be a function of what is available—what a community or organization offers, as well as what the negotiating parties know how to seek (and use). Failure to use third-party intervention when appropriate is just as wasteful and as damaging to the ultimate negotiation process as using the wrong intervention method (e.g., arbitration rather than mediation, when negotiator commitment to outcomes is critical for a lasting resolution), or even using the right method at the wrong time (e.g., before negotiators have exhausted unassisted methods, or after expressed anger and personal attacks have soured one or both parties on the entire process).

The same measures of propriety and timeliness apply to *uninvited* interventions, as when a manager chooses to intervene in a dispute between two of her subordinates. The chooser (who, in this case, is usually the intervening third party) has the advantage of being potentially more objective than the disputants about the choices of whether and how to intervene. The chooser must also keep in mind, however, the likely effect of the intervention on the negotiators—specifically, on their ability to address and manage disputes more effectively in the future. Again, the rule should be one of moderation: “Intervene and control only as deeply as appropriate,” and—to borrow a medical dictum—“First, do no harm” to the negotiators or their willingness and ability to negotiate. This advice assumes that the most important principle is to permit and encourage the negotiators to constructively interact with each other as much as possible without injuring each other; it also assumes that the resolution of a particular dispute does not have to occur in a short time period. To the extent that the disputants will have little or no interaction in the future and that a timely resolution is critical, relatively more invasive (i.e., controlling) interventions may be acceptable—even necessary. We discuss some of the factors that drive the choice of intervention in more detail later in this chapter.

## An Overview of Formal Intervention Methods

Third-party interventions can be described as formal or informal. By formal, we refer to roles and activities that are intentionally designed and recognized as third parties in a traditional sense, such as those taken by judges, labor arbitrators, divorce mediators, or process consultants such as psychologists or organization development (OD) practitioners. By informal, we mean roles and behaviors that are incidental to other primary roles and behaviors, such as those of managers, supervisors, or concerned friends. In this section, we describe three formal styles of third-party behavior: arbitration, mediation, and process consultation. In the next section we will address informal intervention techniques. We will review the objectives, style, and procedural impact of each approach and describe their impact on negotiation outcomes.

### Arbitration

Arbitration, typically, involves low levels of *negotiator* control (high third party control) over outcomes, but high levels of negotiator control over process (see Figure 10.1). Even though arbitration represents loss of outcome control by negotiating parties, it is probably the most common and well-known form of third-party dispute resolution. The process is clear-cut: parties in dispute, after having reached a deadlock or a time deadline without successful resolution of their differences, present their positions to a third party. The third party listens to both sides and then makes a ruling in regard to the outcome of the dispute. Arbitration is used widely in disputes between businesses, and between business and their union-organized workers.

Arbitration has come under increasing scrutiny and criticism as a dispute resolution mechanism, even in the labor relations area. While arbitration initially appears to have two distinct advantages as a resolution procedure (it imposes a clear-cut resolution to the dispute, and thereby the costs of prolonged, unresolved disputes can be avoided), it appears to have several negative consequences as well.

- *The chilling effect.* If the parties in negotiation anticipate that their own failure to agree will lead to a binding arbitrator’s intervention, it may cool their incentive to work seriously for a negotiated settlement. This chilling effect occurs as they avoid making compromises they might be otherwise willing to make, because they fear that the fact finder or arbitrator will split the difference between the last offers the negotiators have on the table. If negotiators anticipate that the arbitrator will split the difference, then it is in their best interest to maintain an extreme, hard-line position because difference-splitting is more likely to result in the hard-liner’s favor.

- *The narcotic effect.* When arbitration is anticipated as a result of the failure of parties to agree, negotiators may also lose interest in the process of negotiating.

Because hard bargaining is costly in time and effort, because there is no guarantee that agreement will be reached, and because an imposed settlement is a guarantee under arbitration, negotiators may take the easy way out. Negotiator passivity, loss of initiative, and dependence on the third party are common results of recurring dispute arbitration.

- *The half-life effect.* Parents are often aware that as the demand for arbitration increases, the sheer number of decisions required also increases and it becomes more likely that decisions will not please one or both sides. This is known as the half-life effect. As the frequency of arbitration increases, disenchantment with the adequacy and fairness of the process develops, and the parties may resort to other means to resolve their disputes.<sup>2</sup>

- *The biasing effect.* Arbitrators must be careful that their decisions do not systematically favor one side or the other and that they maintain an image of fairness and impartiality. Even if each decision, taken separately, appears to be a fair settlement of the current conflict issue, perceived patterns of partiality toward one side may jeopardize the arbitrator's acceptability in future disputes.

- *The decision-acceptance effect.* Arbitrated disputes may engender less commitment to the settlement than alternative forms of dispute resolution. Lasting dispute resolution requires timely and effective implementation, and the key to effective implementation is often the commitment to a decision derived from prior participation in making it. For this reason, arbitration (as a procedure that minimizes disputants' choice of resolution or outcome) is likely to lead to situations in which disputants are less than fully committed to following through, especially if they feel dissatisfied with the arbitrator's decision.

## Mediation

In contrast to arbitration—and as a way to alleviate some of the problems with arbitration mentioned above—mediation has developed increasing support. Although the ultimate objective of mediation is the same as arbitration—to resolve the dispute—the major difference is that mediation seeks to achieve the objective by having the parties themselves create the agreement. It is important to note that formal or contractual mediation is based on established and accepted rules and procedures; later in this chapter, when examining informal interventions, we will discuss informal mediation, which is less well defined. Mediators, typically, have no formal power over outcomes, and they cannot resolve the dispute on their own or impose a solution. Instead, their effectiveness comes from their ability to meet with the parties individually, secure an understanding of the issues in dispute, identify areas of potential compromise in the positions of each side, and encourage the parties to make concessions toward agreement.

**Mediator Behaviors.** Mediation generally proceeds in several stages. In the early stages of a dispute, a mediator will assume a reasonably passive role; she is most

concerned with securing acceptance by the parties and with understanding the nature of the dispute. Mediator strategies may include separating the parties, questioning them about the issues, and actively listening to each side. The mediator must be able to separate rhetoric from true interest and to identify each side's priorities. Once this has been accomplished, the mediator will then begin managing the exchange of proposals and counterproposals, testing each side for areas where concessions may be possible.

As mediation progresses, mediators often become more active and take a more aggressive role. They may bring the parties together for face-to-face deliberations, or they may keep them separate; press one or both sides to make concessions that the mediator judges to be essential; invent proposals and solutions that they think will be acceptable, testing them with each side or even announcing them publicly; or try to get the parties to agree in private. If the mediation effort has been successful, the mediator will ultimately bring the parties together to endorse a final agreement or to publicly announce their settlement. It has been suggested that mediators facilitate concession making without loss of face by the parties, and thereby promote more rapid and effective conflict resolution than would otherwise occur.<sup>3</sup>

Several elements of the mediation process are integral to its success. The first is *timing the mediation efforts* based on the readiness of the parties. Because mediation, typically, is a voluntary process—the parties usually are not forced to enter into mediation except by their willingness to do so—mediation cannot be effective if the parties do not choose to cooperate. If they believe that they have more to gain by holding out or protracting the dispute, then mediation cannot work.

Second, *the mediator must be acceptable* to the parties. The traditional view of the mediator is as a neutral individual whom the parties recognize as impartial, experienced, and potentially helpful. An exception to this might be a friend, peer, or supervisor who chooses to intervene as a mediator. A variety of qualities such as integrity, impartiality, and experience in comparable disputes may be required for a potential mediator to be viewed as acceptable by both sides. At times, however, the only (or most appropriate) mediator available is not without bias to some degree. Such mediator bias has two forms: that of general alignment or affiliation with one side *prior* to mediation, and that of greater support for one side than the other *during* mediation.<sup>4</sup> Disputants may overlook bias of the first sort if they are convinced that the mediator in question shows no bias of the second sort (i.e., actually mediates evenhandedly).

## Is Mediation Effective?

Mediation has been judged effective in from 20 percent to 80 percent of the cases in which it is used; its greatest effectiveness occurred in situations marked by only moderate conflict.<sup>5</sup> By moderate, we mean situations in which tension is apparent and tempers are beginning to fray, but in which negotiations have not deteriorated to physical violence and irrevocably damaging threats and actions.



Disputes beyond the moderate stage are often characterized by drastic actions and reactions and by the “burning of bridges” (relational and perhaps other) by one or both parties.

When the resistance points of both sides don't overlap (see Chapter 2), mediators may have to exert greater direct and indirect pressure on the negotiators in order to create a “positive contract zone,” an overlap of resistance points. Direct pressure occurs if the mediator uses tactics to encourage the parties to soften their positions; indirect pressure comes, typically, through the passage of time, wearing the parties down and increasing the cost of holding out. Mediation is less effective in more intense conflicts, as when the conflict is large, many issues are at stake, or the parties disagree on major priorities. Under such conditions, mediation tactics may be insufficient to move the parties toward mutual agreement.

Mediation tends to be most effective when:

- Conflict is moderate rather than intense.
- The parties are highly motivated to settle.
- Parties are committed to mediation.
- The issues do not concern allocation of severely limited resources.
- The issues do not involve broad, general principles.
- The parties are essentially equal in power.
- Greater intrusion (i.e., arbitration) is threatened as a next step.<sup>6</sup>

Mediation effectiveness can be viewed from a variety of perspectives, including the issues, the disputing parties, and the mediator's behaviors. Relating to the issues, effective behaviors include:

- Identifying the issues.
- Uncovering underlying interests and concerns.
- Setting agendas.
- Packaging, sequencing, and prioritizing agenda items.
- Interpreting and shaping proposals.
- Making suggestions for possible settlements.<sup>7</sup>

Relating to the parties, mediation tended to be more effective if mediators assisted them in one or more of four ways:

- Helping them to save face when making concessions.
- Helping them to resolve internal disagreements.
- Helping them to deal with constituents.
- Applying positive incentives for agreement or concession making (or negative sanctions for noncooperation).<sup>8</sup>

Certain mediator behaviors, in particular, seem to lead to more effective mediation. These include:

FIGURE 10.2

A Strategic Choice Model of Mediator Behavior

		Mediator's perception of "common ground"	
		Low	High
Mediator's concern for parties' aspirations	High	Compensation	Problem solving
	Low	Pressure	Inaction

Adapted from P.J.D. Carnevale, "Strategic Choice in Negotiation," *Negotiation Journal* 2 (1986) pp. 41-56.

- Creating and controlling the agenda.
- Assisting the parties in establishing priorities.
- Maintaining calm, friendly, but firm control over the mediation process.

Mediators deal with a variety of situations and may choose their behaviors based on what they feel a given situation warrants. This suggests a “strategic choice model” of mediator behavior (see Figure 10.2).

Mixing high or low levels of two variables—concern for the disputing parties' aspirations and perception of parties' common ground (i.e., areas of agreement)—produces four basic mediation strategies:

- Problem solving (assisting the parties to engage in integrative exchange).
- Compensation (mediator application of rewards and inducements to entice the parties into making concessions and agreements).
- Pressure (trying to force the parties to reduce their levels of aspiration in the absence of perceived potential for an integrative, or win-win, resolution).
- Inaction (standing back from the dispute, leaving the parties to work things out on their own).<sup>9</sup>

Mediator-applied pressure seems to interact with the type of situation being mediated. Success in mediations marked by intensity (e.g., major conflicts involving many issues and disagreement over major priorities) and high levels of

interparty hostility tend to respond better to more forceful, proactive mediation behaviors. Low-hostility situations tend to respond better to a less-active, more facilitative approach.<sup>10</sup> When high hostility was accompanied by high levels of problem-solving behavior by the negotiators, mediators assisted best by posing problems, challenging negotiators to solve them, and suggesting new ideas and soliciting negotiator responses to them.<sup>11</sup>

### *Liabilities of Arbitration and Mediation*

It should be clear from the above that both mediation and arbitration have their liabilities. The liabilities of *arbitration* are these:

- Negative consequences for negotiator behaviors in anticipation of third-party decisions (e.g., chilling and narcotic effects).
- Removal of outcome control from negotiators.
- Possible lack of disputant commitment to implementing the imposed outcome.

In contrast, the liabilities of *mediation* include:

- Lack of impetus or initiative to adhere to any particular settlement or to settle at all.
- Possible perpetuation of the dispute, perhaps indefinitely (lack of incentive to negotiate).
- Possible extension or escalation of the dispute into more damaging, more costly forms and forums.

### *Process Consultation*

A third formal approach to the resolution of disputes is process consultation, “a set of activities on the part of the consultant that helps the client to perceive, understand, and act upon the process events which occur in the client’s environment.”<sup>12</sup> The objective of process consultation is to defuse the emotional aspect of conflict and to improve communication between the parties, leaving them with renewed or enhanced abilities to manage future disputes. The difference between mediation and process consultation is that mediators are at least somewhat concerned with the issues in dispute, whereas process consultants focus only on procedures. Process consultants assume that if they can teach the parties how to manage conflict more productively and effectively, these improved procedures will lead to productive outcomes. The purpose of the third party’s intervention is to create the foundation for more productive dialogue over substantive issues and to teach the parties how to prevent conflicts from escalating destructively in the future.

**Process Consultation Behaviors.** Process consultants usually employ a variety of tactics.<sup>13</sup> Their first step is often to separate the parties and interview them individually in order to determine each side’s view of the other side, position, and a history of the relationship and its conflicts. Following this diagnostic phase, the consultant uses this information to structure a series of dialogues or confrontations between the parties. These meetings are designed specifically to address the causes of past conflicts and each side’s perceptions of the other. Meetings are held on neutral turf, and the questions of who should attend and what issues should be discussed are planned ahead of time.

The purpose of the third party is to encourage the parties to confront their differences and the reasons for them. The process consultant is referee, timekeeper, and gatekeeper of the process, working to keep the parties on track while also ensuring that the conflict does not escalate. Finally, the third party directs all sides toward some type of problem solving and integration, assuming that by confronting and airing their differences, the parties can create a format for working on their substantive differences in the future and can pursue this agenda without a recurrence of unproductive escalation. Thus, changing the climate for conflict management, promoting constructive dialogue around differences of opinion, and creating the capacity for other people to act as their own third parties are major parts of the process consultant’s agenda.

The description of successful process consultation suggests that process consultants should possess many of the same attributes that we have ascribed to other third parties:

- They should be perceived as experts in the technique, knowledgeable about conflict and its dynamics, able to be emotionally supportive while confronting the parties, and able to diagnose the dispute.
- They should be perceived as clearly neutral, without bias toward one side or the other.
- They should be authoritative—that is, able to establish power over the process that the conflicting parties are pursuing, thereby intervening and controlling it.

Although they do not attempt to impose a particular solution or outcome, process consultants must be able to shape the manner in which the parties interact, separating them or bringing them together, and to control the agenda that they follow when interaction occurs. Without such control, the parties will resort to their earlier pattern of destructive hostility. Process consultation goes the farthest of the techniques discussed here in putting the issues under dispute back in the hands of the disputing parties. To make process consultation work, however, the parties must put aside these substantive differences, something that is hard for them to do.

Process consultation is not likely to be effective when:

- The parties are deeply locked in a dispute over one or more major unresolved issues.

- The disputants are involved in a short-term relationship and will not be working together very long.
- The substantive issues in dispute are distributive (i.e., zero-sum).
- The level of conflict is so high that the parties are more intent on revenge or retribution than reconciliation.

In effect, process consultation may work only when sustained conflict has worn the parties out, making them want resolution more than continued warfare, or when the parties sincerely want to coexist but do not have the skills to do so. If the parties do not have sufficient incentive to work together, efforts at process consultation will be undermined. One side will exploit trust, cooperation, and honesty, and the dispute will quickly escalate.

### Other Third-Party Styles: Informal Interventions

We have reviewed several major approaches used by third parties to resolve disputes. These approaches—arbitration, mediation, and process consultation—represent formal, or “textbook,” approaches to the resolution of disputes, and they are the three most commonly described in the research on third-party behavior. However, a variety of other, *informal* third-party approaches are possible, as in the case of a manager intervening in a dispute between two subordinates. Considering that such informal third parties can exert either high or low amounts of process or decision control, the possibilities appear in Figure 10.3:

A recent study (asking practicing managers to describe the last time they intervened in a dispute between their subordinates) concluded that managers tend to use one of three of these four styles (*not* mediation).

1. **Inquisitorial Intervention.** This was the most common style. A manager who uses this style:

- Exerts high control over both the process and the decision.
- Tells both sides to present their cases.
- Asks lots of questions to probe into each side’s position.
- Frequently controls who is allowed to speak and what they say.
- Then invents a solution that she thinks will meet both parties’ needs and usually enforces that solution on both parties.

2. **Adversarial Intervention.** A manager who uses this style:

- Exerts high control over the decision, but not the process.
- Does not control the process in that he does not ask questions to try to “get the whole story” or to control the destructive aspects of the conflict between the parties.
- Passively listens to what each side chooses to tell him.

FIGURE 10.3

Informal Third-Party Intervention Styles

		Degree of managerial outcome control	
		High	Low
Degree of managerial process control	High	Inquisitorial Intervention	(Mediational Intervention?)
	Low	Adversarial Intervention	Providing Impetus

Adapted from B. H. Sheppard, “Managers as Inquisitors. Some Lessons from the Law,” in *Negotiating in Organizations*, ed. M. Bazerman and R. J. Lewicki (Beverly Hills: Sage Publications, 1983).

- Then makes a decision (tells the parties how to solve the conflict) based exclusively on the presentations.
3. **Providing Impetus.** Managers who use this style, typically:
- Do not exert control over the decision.
  - Exert only a small amount of control over the process.
  - Try to make a quick diagnosis of what the conflict is about.
  - Tell the parties that if they don’t find a solution, one will be imposed on them.<sup>14</sup>

### Which Approach Is More Effective?

Managers spontaneously tend to use styles that resemble acting like arbitrators or judges, or that provide a common enemy by threatening to settle the dispute for the parties in an undesirable way if they can’t settle it themselves. Note that the remaining cell in Figure 10.3, which we have labeled “Mediational Intervention,” is *not* a style commonly used by managers. Although managers claim to prefer mediation as a third-party style, it is not clear that managers really understand how to mediate without being trained to do so.<sup>15</sup> When handling a conflict, managers seem prone to assume responsibility for having a major impact on the outcome of the conflict, that is, the specific decision or outcome arrived at by the disputing parties.<sup>16</sup> Therefore, managers may be very uncomfortable using a

mediation strategy, which requires that they control the process of conflict but leave the solution in the hands of the disputants.

We believe that mediation should be used more often for informal third-party interventions than it is. However, more attention needs to be focused on determining how managers can better identify mediational opportunities, and on how they can learn to mediate more effectively.

## Summary

If negotiators are unable to manage disputes effectively, third-party intervention may be a way to help. In this chapter, we reviewed three prototypical styles of third-party intervention: arbitration, mediation, and process consultation. Each of these styles has its strengths and weakness as an intervention and dispute-resolution approach. The styles differ as to whether the disputants surrender control over the way they interact with the other negotiator, or over deciding what the actual outcome of the negotiation will be, to the third party. Arbitrators, typically, specify a structured process in which disputing parties have relative freedom to present their side and perspective on the issues; then the third party decides the outcome, often imposing a resolution of the disputants. Mediators exert a great deal of control over how the parties interact, both physically and communicationally; typically, they do *not* choose the actual solution for the disputants, although they may offer guidance and suggestions. Finally, process consultants are less involved in the disputed issues than arbitrators or mediators, but they are heavily involved in helping the parties to establish or enhance their communication and dispute-resolution skills, which the parties can then apply to specific problems as they deal with each other in the future.

In addition, there are other third-party roles and styles in common use (including informal versions of the three formal approaches we addressed). A great deal remains to be done in this area, both in determining the mastery and propriety of particular informal third-party styles and techniques for various types of conflict, as well as in achieving a better understanding of the kinds of conflicts that third parties can effectively assist in resolving, and the ways third parties go about deciding when and how to intervene in disputes.

## End Notes

1. See Moore (1986, pp. 11–12).
2. See Anderson and Kochan (1977).
3. See Rubin (1980).
4. See Carnevale and Conlon (1990).
5. See Kressel and Pruitt (1989).
6. See Carnevale and Pruitt (1992).

7. Ibid.
8. Ibid.
9. See Carnevale (1986).
10. See Donohue (1989), Hiltrop (1989), and Lim and Carnevale (1990).
11. See Zubek, Pruitt, Pierce, and Iocolano (1989).
12. See Schein (1987, p. 34).
13. See Beckhard, (1967) and Walton (1987).
14. See Sheppard (1983).
15. See Lewicki and Sheppard (1985).
16. See Sheppard, Blumenfeld-Jones, Minton, and Hyder (1994).

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# The Power of Talk: Who Gets Heard and Why

by Deborah Tannen



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# The Power of Talk:

by Deborah Tannen

The head of a large division of a multinational corporation was running a meeting devoted to performance assessment. Each senior manager stood up, reviewed the individuals in his group, and evaluated them for promotion. Although there were women in every group, not one of them made the cut. One after another, each manager declared, in effect, that every woman in his group didn't have the self-confidence needed to be promoted. The division head began to doubt his ears. How could it be that all the talented women in the division suffered from a lack of self-confidence?

In all likelihood, they didn't. Consider the many women who have left large corporations to start their own businesses, obviously exhibiting enough confidence to succeed on their own. Judgments about confidence can be inferred only from the way people present themselves, and much of that presentation is in the form of talk.

The CEO of a major corporation told me that he often has to make decisions in five minutes about matters on which others may have worked five months. He said he uses this rule: If the person making the proposal seems confident, the CEO approves it. If not, he says no. This might seem like a

reasonable approach. But my field of research, sociolinguistics, suggests otherwise. The CEO obviously thinks he knows what a confident person sounds like. But his judgment, which may be dead right for some people, may be dead wrong for others.

Communication isn't as simple as saying what you mean. How you say what you mean is crucial, and differs from one person to the next, because using language is learned social behavior. How we talk and listen are deeply influenced by cultural experience. Although we might think that our ways of saying what we mean are natural, we can run into trouble if we interpret and evaluate others as if they necessarily felt the same way we'd feel if we spoke the way they did.

Since 1974, I have been researching the influence of linguistic style on conversations and human re-

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*We all know what confidence, competence, and authority sound like. Or do we?*

# Who Gets Heard and Why

relationships. In the past four years, I have extended that research to the workplace, where I have observed how ways of speaking learned in childhood affect judgments of competence and confidence, as well as who gets heard, who gets credit, and what gets done.

The division head who was dumbfounded to hear that all the talented women in his organization lacked confidence was probably right to be skeptical. The senior managers were judging the women in their groups by their own linguistic norms, but women—like people who have grown up in a different culture—have often learned different styles of speaking than men, which can make them seem less competent and self-assured than they are.

## What Is Linguistic Style?

Everything that is said must be said in a certain way—in a certain tone of voice, at a certain rate of speed, and with a certain degree of loudness. Whereas often we consciously consider what to say before speaking, we rarely think about how to say it, unless the situation is obviously loaded—for example, a job interview or a tricky performance re-

view. Linguistic style refers to a person's characteristic speaking pattern. It includes such features as directness or indirectness, pacing and pausing, word choice, and the use of such elements as jokes, figures of speech, stories, questions, and apologies. In other words, linguistic style is a set of culturally learned signals by which we not only communicate what we mean but also interpret others' meaning and evaluate one another as people.

Consider turn taking, one element of linguistic style. Conversation is an enterprise in which people take turns: One person speaks, then the other responds. However, this apparently simple exchange requires a subtle negotiation of signals so that you know when the other person is finished and it's your turn to begin. Cultural factors such as country or region of origin and ethnic background influence how long a pause seems natural. When Bob, who is from Detroit, has a conversation with his colleague Joe, from New York City, it's hard for him to get a word in edgewise because he expects a slightly longer pause between turns than Joe does. A pause of that length never comes because, before it has a chance to, Joe senses an uncomfortable silence, which he fills with more talk of his own.

Both men fail to realize that differences in conversational style are getting in their way. Bob thinks that Joe is pushy and uninterested in what he has to say, and Joe thinks that Bob doesn't have much to contribute. Similarly, when Sally relocated from Texas to Washington, D.C., she kept searching for the right time to break in during staff meetings – and never found it. Although in Texas she was considered outgoing and confident, in Washington she was perceived as shy and retiring. Her boss even suggested she take an assertiveness training course. Thus slight differences in conversational style – in these cases, a few seconds of pause – can have a surprising impact on who gets heard and on the judgments, including psychological ones, that are made about people and their abilities.

Every utterance functions on two levels. We're all familiar with the first one: Language communicates ideas. The second level is mostly invisible to us, but it plays a powerful role in communication. As a form of social behavior, language also negotiates relationships. Through ways of speaking, we signal – and create – the relative status of speakers and their level of rapport. If you say, "Sit down!" you are signaling that you have higher status than the person you are addressing, that you are so close to each other that you can drop all pleasantries, or that you are angry. If you say, "I would be honored if you would sit down," you are signaling great respect – or great sarcasm, depending on your tone of voice, the situation, and what you both know about how close you really are. If you say, "You must be so tired – why don't you sit down," you are communicating either closeness and concern or condescension. Each of these ways of saying "the same thing" – telling someone to sit down – can have a vastly different meaning.

In every community known to linguists, the patterns that constitute linguistic style are relatively different for men and women. What's "natural" for most men speaking a given language is, in some cases, different from what's "natural" for most women. That is because we learn ways of speaking as children growing up, especially from peers, and children tend to play with other children of the same sex. The research of sociologists, anthropologists, and psychologists observing American children at play has shown that, although both girls and boys find ways of creating rapport and negotiating status, girls tend to learn conversational rituals that focus on the rapport dimension of relationships whereas boys tend to learn rituals that focus on the status dimension.

Girls tend to play with a single best friend or in small groups, and they spend a lot of time talking


They use language to negotiate how close they are; for example, the girl you tell your secrets to becomes your best friend. Girls learn to downplay ways in which one is better than the others and to emphasize ways in which they are all the same. From childhood, most girls learn that sounding too sure of themselves will make them unpopular with their peers – although nobody really takes such modesty literally. A group of girls will ostracize a girl who calls attention to her own superiority and criticize her by saying, "She thinks she's something"; and a girl who tells others what to do is called "bossy." Thus girls learn to talk in ways that balance their own needs with those of others – to save face for one another in the broadest sense of the term.

Boys tend to play very differently. They usually play in larger groups in which more boys can be included, but not everyone is treated as an equal. Boys with high status in their group are expected to emphasize rather than downplay their status, and usually one or several boys will be seen as the leader or leaders. Boys generally don't accuse one another of being bossy, because the leader is expected to tell lower-status boys what to do. Boys learn to use language to negotiate their status in the group by displaying their abilities and knowledge, and by challenging others and resisting challenges. Giving orders is one way of getting and keeping the high-status role. Another is taking center stage by telling stories or jokes.

This is not to say that all boys and girls grow up this way or feel comfortable in these groups or are equally successful at negotiating within these norms. But, for the most part, these childhood play groups are where boys and girls learn their conversational styles. In this sense, they grow up in different worlds. The result is that women and men tend to have different habitual ways of saying what they mean, and conversations between them can be like cross-cultural communication. You can't assume that the other person means what you would mean if you said the same thing in the same way.

My research in companies across the United States shows that the lessons learned in childhood carry over into the workplace. Consider the following example: A focus group was organized at a major multinational company to evaluate a recently implemented flextime policy. The participants sat in a circle and discussed the new system. The group concluded that it was excellent, but they also agreed on ways to improve it. The meeting went well and was deemed a success by all, according to my own observations and everyone's comments to me. But the next day, I was in for a surprise.





I had left the meeting with the impression that Phil had been responsible for most of the suggestions adopted by the group. But as I typed up my notes, I noticed that Cheryl had made almost all those suggestions. I had thought that the key ideas came from Phil because he had picked up Cheryl's points and supported them, speaking at greater length in doing so than she had in raising them.

It would be easy to regard Phil as having stolen Cheryl's ideas – and her thunder. But that would be inaccurate. Phil never claimed Cheryl's ideas as his own. Cheryl herself told me later that she left the meeting confident that she had contributed significantly, and that she appreciated Phil's support. She volunteered, with a laugh, "It was not one of those times when a woman says something and it's ignored, then a man says it and it's picked up." In other words, Cheryl and Phil worked well as a team, the group fulfilled its charge, and the company got what it needed. So what was the problem?

## Even the choice of pronoun can affect who gets credit.

I went back and asked all the participants who they thought had been the most influential group member, the one most responsible for the ideas that had been adopted. The pattern of answers was revealing. The two other women in the group named Cheryl. Two of the three men named Phil. Of the men, only Phil named Cheryl. In other words, in this instance, the women evaluated the contribution of another woman more accurately than the men did.

Meetings like this take place daily in companies around the country. Unless managers are unusually good at listening closely to how people say what they mean, the talents of someone like Cheryl may well be undervalued and underutilized.

### One Up, One Down

Individual speakers vary in how sensitive they are to the social dynamics of language – in other words, to the subtle nuances of what others say to them. Men tend to be sensitive to the power dynamics of interaction, speaking in ways that position themselves as one up and resisting being put in a one-down position by others. Women tend to react more strongly to the rapport dynamic, speaking in ways that save face for others and buffering statements that could be seen as putting others in a one-

down position. These linguistic patterns are pervasive; you can hear them in hundreds of exchanges in the workplace every day. And, as in the case of Cheryl and Phil, they affect who gets heard and who gets credit.

**Getting Credit.** Even so small a linguistic strategy as the choice of pronoun can affect who gets credit. In my research in the workplace, I heard men say "I" in situations where I heard women say "we." For example, one publishing company executive said, "I'm hiring a new manager. I'm going to put him in charge of my marketing division," as if he owned the corporation. In stark contrast, I recorded women saying "we" when referring to work they alone had done. One woman explained that it would sound too self-promoting to claim credit in an obvious way by saying, "I did this." Yet she expected – sometimes vainly – that others would know it was her work and would give her the credit she did not claim for herself.

Managers might leap to the conclusion that women who do not take credit for what they've done should be taught to do so. But that solution is

problematic because we associate ways of speaking with moral qualities: The way we speak is who we are and who we want to be.

Veronica, a senior researcher in a high-tech company, had an observant boss. He noticed that many of the ideas coming out of the group were hers but that often someone else trumpeted them around the office and got credit for them. He advised her to "own" her ideas and make sure she got the credit. But Veronica found she simply didn't enjoy her work if she had to approach it as what seemed to her an unattractive and unappealing "grabbing game." It was her dislike of such behavior that had led her to avoid it in the first place.

Whatever the motivation, women are less likely than men to have learned to blow their own horn. And they are more likely than men to believe that if they do so, they won't be liked.

Many have argued that the growing trend of assigning work to teams may be especially congenial to women, but it may also create complications for performance evaluation. When ideas are generated and work is accomplished in the privacy of the team, the outcome of the team's effort may become associated with the person most vocal about reporting results. There are many women and men – but probably relatively more women – who are reluctant to put themselves forward in this way and

who consequently risk not getting credit for their contributions.

**Confidence and Boasting.** The CEO who based his decisions on the confidence level of speakers was articulating a value that is widely shared in U.S. businesses: One way to judge confidence is by an individual's behavior, especially verbal behavior. Here again, many women are at a disadvantage.

Studies show that women are more likely to downplay their certainty and men are more likely to minimize their doubts. Psychologist Laurie Heatherington and her colleagues devised an ingenious experiment, which they reported in the journal *Sex Roles* (Volume 29, 1993). They asked hundreds of incoming college students to predict what grades they would get in their first year. Some subjects were asked to make their predictions privately by writing them down and placing them in an envelope; others were asked to make their predictions publicly, in the presence of a researcher. The results showed that more women than men predicted lower grades for themselves if they made their predictions publicly. If they made their predictions privately, the predictions were the same as those of the men—and the same as their actual grades. This study provides evidence that what comes across as lack of confidence—predicting lower grades for oneself—may reflect not one's actual level of confidence but the desire not to seem boastful.

These habits with regard to appearing humble or confident result from the socialization of boys and girls by their peers in childhood play. As adults, both women and men find these behaviors reinforced by the positive responses they get from friends and relatives who share the same norms. But the norms of behavior in the U.S. business world are based on the style of interaction that is more common among men—at least, among American men.

**Asking Questions.** Although asking the right questions is one of the hallmarks of a good manager, how and when questions are asked can send unintended signals about competence and power. In a group, if only one person asks questions, he or she risks being seen as the only ignorant one. Furthermore, we judge others not only by how they speak but also by how they are spoken to. The person who asks questions may end up being lectured to and looking like a novice under a schoolmaster's tutelage. The way boys are socialized makes them more likely to be aware of the underlying power dynamic by which a question asker can be seen in a one-down position.

One practicing physician learned the hard way that any exchange of information can become the

basis for judgments—or misjudgments—about competence. During her training, she received a negative evaluation that she thought was unfair, so she asked her supervising physician for an explanation. He said that she knew less than her peers. Amazed at his answer, she asked how he had reached that conclusion. He said, "You ask more questions."

Along with cultural influences and individual personality, gender seems to play a role in whether and when people ask questions. For example, of all the observations I've made in lectures and books, the one that sparks the most enthusiastic flash of recognition is that men are less likely than women to stop and ask for directions when they are lost. I explain that men often resist asking for directions because they are aware that it puts them in a one-down position and because they value the independence that comes with finding their way by themselves. Asking for directions while driving is only one instance—along with many others that researchers have examined—in which men seem less likely than women to ask questions. I believe this is because they are more attuned than women to the potential face-losing aspect of asking questions. And men who believe that asking questions might reflect negatively on them may, in turn, be likely to form a negative opinion of others who ask questions in situations where they would not.

## Conversational Rituals

Conversation is fundamentally ritual in the sense that we speak in ways our culture has conventionalized and expect certain types of responses. Take greetings, for example. I have heard visitors to the United States complain that Americans are

## Women are likely to downplay

hypocritical because they ask how you are but aren't interested in the answer. To Americans, How are you? is obviously a ritualized way to start a conversation rather than a literal request for information. In other parts of the world, including the Philippines, people ask each other, "Where are you going?" when they meet. The question seems intrusive to Americans, who do not realize that it, too, is a ritual query to which the only expected reply is a vague "Over there."

It's easy and entertaining to observe different rituals in foreign countries. But we don't expect differences, and are far less likely to recognize the ritualized nature of our conversations, when we are with our compatriots at work. Our differing rituals can

be even more problematic when we think we're all speaking the same language.

**Apologies.** Consider the simple phrase *I'm sorry*.

**Catherine:** How did that big presentation go?

**Bob:** Oh, not very well. I got a lot of flak from the VP for finance, and I didn't have the numbers at my fingertips.

**Catherine:** Oh, I'm sorry. I know how hard you worked on that.

In this case, *I'm sorry* probably means "I'm sorry that happened," not "I apologize," unless it was Catherine's responsibility to supply Bob with the numbers for the presentation. Women tend to say *I'm sorry* more frequently than men, and often they intend it in this way—as a ritualized means of expressing concern. It's one of many learned elements of conversational style that girls often use to establish rapport. Ritual apologies—like other conversational rituals—work well when both parties share the same assumptions about their use. But people who utter frequent ritual apologies may end up appearing weaker, less confident, and literally more blameworthy than people who don't.

Apologies tend to be regarded differently by men, who are more likely to focus on the status implications of exchanges. Many men avoid apologies because they see them as putting the speaker in a one-down position. I observed with some amazement an encounter among several lawyers engaged in a negotiation over a speakerphone. At one point, the lawyer in whose office I was sitting accidentally elbowed the telephone and cut off the call. When his secretary got the parties back on again, I expected him to say what I would have said: "Sorry about that. I knocked the phone with my elbow." Instead, he said, "Hey, what happened? One minute you were there; the next minute you were gone!" This

may be an equally effective or superior strategy in some settings.

**Feedback.** Styles of giving feedback contain a ritual element that often is the cause for misunderstanding. Consider the following exchange: A manager had to tell her marketing director to rewrite a report. She began this potentially awkward task by citing the report's strengths and then moved to the main point: the weaknesses that needed to be remedied. The marketing director seemed to understand and accept his supervisor's comments, but his revision contained only minor changes and failed to address the major weaknesses. When the manager told him of her dissatisfaction, he accused her of misleading him: "You told me it was fine."

The impasse resulted from different linguistic styles. To the manager, it was natural to buffer the criticism by beginning with praise. Telling her subordinate that his report is inadequate and has to be rewritten puts him in a one-down position. Praising him for the parts that are good is a ritualized way of saving face for him. But the marketing director did not share his supervisor's assumption about how feedback should be given. Instead, he assumed that what she mentioned first was the main point and that what she brought up later was an afterthought.

Those who expect feedback to come in the way the manager present-

their certainty; men are likely to minimize their doubts.

lawyer seemed to have an automatic impulse not to admit fault if he didn't have to. For me, it was one of those pivotal moments when you realize that the world you live in is not the one everyone lives in and that the way you assume is the way to talk is really only one of many.

Those who caution managers not to undermine their authority by apologizing are approaching interaction from the perspective of the power dynamic. In many cases, this strategy is effective. On the other hand, when I asked people what frustrated them in their jobs, one frequently voiced complaint was working with or for someone who refuses to apologize or admit fault. In other words, accepting responsibility for errors and admitting mistakes

ed it would appreciate her tact and would regard a more blunt approach as unnecessarily callous. But those who share the marketing director's assumptions would regard the blunt approach as honest and no-nonsense, and the manager's as obfuscating. Because each one's assumptions seemed self-evident, each blamed the other: The manager thought the marketing director was not listening, and he thought she had not communicated clearly or had changed her mind. This is significant because it illustrates that incidents labeled vaguely as "poor communication" may be the result of differing linguistic styles.

**Compliments.** Exchanging compliments is a common ritual, especially among women. A mismatch in expectations about this ritual left Susan, a manager in the human resources field, in a one-down position. She and her colleague Bill had both given presentations at a national conference. On the airplane home, Susan told Bill, "That was a great talk!" "Thank you," he said. Then she asked, "What did you think of mine?" He responded with a lengthy and detailed critique, as she listened uncomfortably. An unpleasant feeling of having been put down came over her. Somehow she had been positioned as the novice in need of his expert advice. Even worse, she had only herself to blame, since she had, after all, asked Bill what he thought of her talk.

But had Susan asked for the response she received? When she asked Bill what he thought about her talk, she expected to hear not a critique but a compliment. In fact, her question had been an attempt to repair a ritual gone awry. Susan's initial compliment to Bill was the kind of automatic recognition she felt was more or less required after a colleague gives a presentation, and she expected Bill to respond with a matching compliment. She was just talking automatically, but he either sincerely misunderstood the ritual or simply took the opportunity to bask in the one-up position of critic. Whatever his motivation, it was Susan's attempt to spark an exchange of compliments that gave him the opening.

Although this exchange could have occurred between two men, it does not seem coincidental that it happened between a man and a woman. Linguist Janet Holmes discovered that women pay more compliments than men (*Anthropological Linguistics*, Volume 28, 1986). And, as I have observed, fewer men are likely to ask, "What did you think of my talk?" precisely because the question might invite an unwanted critique.

In the social structure of the peer groups in which they grow up, boys are indeed

The exchange between Susan and Bill also suggests how women's and men's characteristic styles may put women at a disadvantage in the workplace. If one person is trying to minimize status differences, maintain an appearance that everyone is equal, and save face for the other, while another person is trying to maintain the one-up position and avoid being positioned as one down, the person seeking the one-up position is likely to get it. At the same time, the person who has not been expending any effort to avoid the one-down position is likely to end up in it. Because women are more likely to take (or accept) the role of advice seeker, men are more inclined to interpret a ritual question from a woman as a request for advice.

**Ritual Opposition.** Apologizing, mitigating criticism with praise, and exchanging compliments are rituals common among women that men often take literally. A ritual common among men that women often take literally is ritual opposition.

A woman in communications told me she watched with distaste and distress as her office mate argued heatedly with another colleague about whose division should suffer budget cuts. She was even more surprised, however, that a short time later they were as friendly as ever. "How can you pretend that fight never happened?" she asked. "Who's pretending it never happened?" he responded, as puzzled by her question as she had been by his behavior. "It happened," he said, "and it's over." What she took as literal fighting to him was a routine part of daily negotiation: a ritual fight.

Many Americans expect the discussion of ideas to be a ritual fight—that is, an exploration through verbal opposition. They present their own ideas in the most certain and absolute form they can, and wait to see if they are challenged. Being forced to defend an idea provides an opportunity to test it. In the same spirit, they may play devil's advocate in challenging their colleagues' ideas—trying to poke holes and find weaknesses—as a way of helping them explore and test their ideas.

This style can work well if everyone shares it, but those unaccustomed to it are likely to miss its ritual nature. They may give up an idea that is

## Men are more attuned than women to the potential face-losing

looking for opportunities to put others down and take the one-up position for themselves. In contrast, one of the rituals girls learn is taking the one-down position but assuming that the other person will recognize the ritual nature of the self-denigration and pull them back up.

challenged, taking the objections as an indication that the idea was a poor one. Worse, they may take the opposition as a personal attack and may find it impossible to do their best in a contentious environment. People unaccustomed to this style may hedge when stating their ideas in order to fend off

potential attacks. Ironically, this posture makes their arguments appear weak and is more likely to invite attack from pugnacious colleagues than to fend it off.

Ritual opposition can even play a role in who gets hired. Some consulting firms that recruit graduates from the top business schools use a confrontational

should be necessary for success was to do a great job, that superior performance should be recognized and rewarded. In contrast, men often told me that if women weren't promoted, it was because they simply weren't up to snuff. Looking around, however, I saw evidence that men more often than women behaved in ways likely to get them recognized by those with the power to determine their advancement.

In all the companies I visited, I observed what happened at lunchtime. I saw young men who regularly ate lunch with their boss, and senior men who ate with the big boss. I noticed far fewer women who sought out the highest-level person they could eat with. But one is more likely to get recognition for work done if

one talks about it to those higher up, and it is easier to do so if the lines of communication are already open. Furthermore, given the opportunity for a conversation with superiors, men and women are likely to have different ways of talking about their accomplishments because of the different ways in which they were socialized as children. Boys are rewarded by their peers if they talk up their achievements, whereas girls are rewarded if they play theirs down. Linguistic styles common among men may tend to give them some advantages when it comes to managing up.

All speakers are aware of the status of the person they are talking to and adjust accordingly. Everyone speaks differently when talking to a boss than when talking to a subordinate. But, surprisingly, the ways in which they adjust their talk may be different and thus may project different images of themselves.

Communications researchers Karen Tracy and Eric Eisenberg studied how relative status affects the way people give criticism. They devised a business letter that contained some errors and asked 13 male and 11 female college students to role-play delivering criticism under two scenarios. In the first, the speaker was a boss talking to a subordinate; in the second, the speaker was a subordinate talking to his or her boss. The researchers measured how hard the speakers tried to avoid hurting the feelings of the person they were criticizing.

One might expect people to be more careful about how they deliver criticism when they are in a subordinate position. Tracy and Eisenberg found that hypothesis to be true for the men in their study but not for the women. As they reported in *Research on Language and Social Interaction* (Volume 24, 1990/1991), the women showed more concern about the other person's feelings when they

## Those who are uncomfortable with verbal opposition – women or men – run the risk of seeming insecure about their ideas.

interviewing technique. They challenge the candidate to "crack a case" in real time. A partner at one firm told me, "Women tend to do less well in this kind of interaction, and it certainly affects who gets hired. But, in fact, many women who don't 'test well' turn out to be good consultants. They're often smarter than some of the men who looked like analytic powerhouses under pressure."

The level of verbal opposition varies from one company's culture to the next, but I saw instances of it in all the organizations I studied. Anyone who is uncomfortable with this linguistic style – and that includes some men as well as many women – risks appearing insecure about his or her ideas.

### Negotiating Authority

In organizations, formal authority comes from the position one holds. But actual authority has to be negotiated day to day. The effectiveness of individual managers depends in part on their skill in negotiating authority and on whether others reinforce or undercut their efforts. The way linguistic style reflects status plays a subtle role in placing individuals within a hierarchy.

**Managing Up and Down.** In all the companies I researched, I heard from women who knew they

### aspect of asking questions.

were doing a superior job and knew that their co-workers (and sometimes their immediate bosses) knew it as well, but believed that the higher-ups did not. They frequently told me that something outside themselves was holding them back and found it frustrating because they thought that all that

were playing the role of superior. In other words, the women were more careful to save face for the other person when they were managing down than when they were managing up. This pattern recalls the way girls are socialized: Those who are in some way superior are expected to downplay rather than flaunt their superiority.

In my own recordings of workplace communication, I observed women talking in similar ways. For example, when a manager had to correct a mistake

ness to push around boys who assume the one-down position

At first glance, it would seem that only the powerful can get away with bald commands such as, "Have that report on my desk by noon." But power in an organization also can lead to requests so indirect that they don't sound like requests at all. A boss who says, "Do we have the sales data by product line for each region?" would be surprised and frustrated if a subordinate responded, "We probably do" rather than "I'll get it for you."

Examples such as these notwithstanding, many researchers have claimed that those in subordinate positions are more likely to speak indirectly, and that is surely accurate in some situations. For example, linguist Charlotte Linde, in a study published in *Language in Society*

(Volume 17, 1988), examined the black-box conversations that took place between pilots and copilots before airplane crashes. In one particularly tragic instance, an Air Florida plane crashed into the Potomac River immediately after attempting take-off from National Airport in Washington, D.C., killing all but 5 of the 74 people on board. The pilot, it turned out, had little experience flying in icy weather. The copilot had a bit more, and it became heartbreakingly clear on analysis that he had tried to warn the pilot but had done so indirectly. Alerted by Linde's observation, I examined the transcript of the conversations and found evidence of her hypothesis. The copilot repeatedly called attention to the bad weather and to ice buildup on other planes:

**Copilot:** Look how the ice is just hanging on his, ah, back, back there, see that? See all those icicles on the back there and everything?

**Pilot:** Yeah

[The copilot also expressed concern about the long waiting time since deicing.]

**Copilot:** Boy, this is a, this is a losing battle here on trying to deice those things; it [gives] you a false feeling of security, that's all that does.

[Just before they took off, the copilot expressed another concern – about abnormal instrument readings – but again he didn't press the matter when it wasn't picked up by the pilot.]

**Copilot:** That don't seem right, does it? [3-second pause]. Ah, that's not right. Well–

**Pilot:** Yes it is, there's 80

**Copilot:** Naw, I don't think that's right. [7-second pause] Ah, maybe it is.

Shortly thereafter, the plane took off, with tragic results. In other instances as well as this one, Linde observed that copilots, who are second in command, are more likely to express themselves indi-

## People in powerful positions are likely to reward linguistic styles similar to their own.

made by her secretary, she did so by acknowledging that there were mitigating circumstances. She said, laughing, "You know, it's hard to do things around here, isn't it, with all these people coming in!" The manager was saving face for her subordinate, just like the female students role-playing in the Tracy and Eisenberg study

Is this an effective way to communicate? One must ask, effective for what? The manager in question established a positive environment in her group, and the work was done effectively. On the other hand, numerous women in many different fields told me that their bosses say they don't project the proper authority.

**Indirectness.** Another linguistic signal that varies with power and status is indirectness – the tendency to say what we mean without spelling it out in so many words. Despite the widespread belief in the United States that it's always best to say exactly what we mean, indirectness is a fundamental and pervasive element in human communication. It also is one of the elements that vary most from one culture to another, and it can cause enormous misunderstanding when speakers have different habits and expectations about how it is used. It's often said that American women are more indirect than American men, but in fact everyone tends to be indirect in some situations and in different ways. Allowing for cultural, ethnic, regional, and individual differences, women are especially likely to be indirect when it comes to telling others what to do, which is not surprising, considering girls' readiness to brand other girls as bossy. On the other hand, men are especially likely to be indirect when it comes to admitting fault or weakness, which also is not surprising, considering boys' readi-



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rectly or otherwise mitigate, or soften, their communication when they are suggesting courses of action to the pilot. In an effort to avert similar disasters, some airlines now offer training for copilots to express themselves in more assertive ways.

This solution seems self-evidently appropriate to most Americans. But when I assigned Linde's article in a graduate seminar I taught, a Japanese student pointed out that it would be just as effective to train pilots to pick up on hints. This approach reflects assumptions about communication that typify Japanese culture, which places great value on the ability of people to understand one another without putting everything into words. Either directness or indirectness can be a successful means of communication as long as the linguistic style is understood by the participants.

In the world of work, however, there is more at stake than whether the communication is understood. People in powerful positions are likely to reward styles similar to their own, because we all tend to take as self-evident the logic of our own styles. Accordingly, there is evidence that in the U.S. workplace, where instructions from a superior are expected to be voiced in a relatively direct manner, those who tend to be indirect when telling subordinates what to do may be perceived as lacking in confidence.

Consider the case of the manager at a national magazine who was responsible for giving assignments to reporters. She tended to phrase her assignments as questions. For example, she asked, "How would you like to do the X project with Y?" or said, "I was thinking of putting you on the X project. Is that okay?" This worked extremely well with her staff; they liked working for her, and the work got done in an efficient and orderly manner. But when she had her midyear evaluation with her own boss, he criticized her for not assuming the proper demeanor with her staff.

In any work environment, the higher-ranking person has the power to enforce his or her view of appropriate demeanor, created in part by linguistic style. In most U.S. contexts, that view is likely to assume that the person in authority has the right to be relatively direct rather than to mitigate orders. There also are cases, however, in which the higher-ranking person assumes a more indirect style. The owner of a retail operation told her subordinate, a store manager, to do something. He said he would do it, but a week later he still hadn't. They were able to trace the difficulty to the following conversation: She had said, "The bookkeeper needs help with the billing. How would you feel about helping her out?" He had said, "Fine." This conversation

had seemed to be clear and flawless at the time, but it turned out that they had interpreted this simple exchange in very different ways. She thought he meant, "Fine, I'll help the bookkeeper out." He thought he meant, "Fine, I'll think about how I would feel about helping the bookkeeper out." He did think about it and came to the conclusion that he had more important things to do and couldn't spare the time.

To the owner, "How would you feel about helping the bookkeeper out?" was an obviously appropriate way to give the order "Help the bookkeeper out with the billing." Those who expect orders to be given as bald imperatives may find such locutions annoying or even misleading. But those for whom this style is natural do not think they are being indirect. They believe they are being clear in a polite or respectful way.

What is atypical in this example is that the person with the more indirect style was the boss, so the store manager was motivated to adapt to her style. She still gives orders the same way, but the store manager now understands how she means what she says. It's more common in U.S. business contexts for the highest-ranking people to take a more direct style, with the result that many women in authority risk being judged by their superiors as lacking the appropriate demeanor – and, consequently, lacking confidence.


### What to Do?

I am often asked, What is the best way to give criticism? or What is the best way to give orders? – in other words, What is the best way to communicate? The answer is that there is no one best way. The results of a given way of speaking will vary depending on the situation, the culture of the company, the relative rank of speakers, their linguistic styles, and how those styles interact with one another. Because of all those influences, any way of speaking could be perfect for communicating with one person in one situation and disastrous with someone else in another. The critical skill for managers is to become aware of the workings and power of linguistic style, to make sure that people with something valuable to contribute get heard.

It may seem, for example, that running a meeting in an unstructured way gives equal opportunity to all. But awareness of the differences in conversational style makes it easy to see the potential for unequal access. Those who are comfortable speaking up in groups, who need little or no silence before raising their hands, or who speak out easily without waiting to be recognized are far more likely

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to get heard at meetings. Those who refrain from talking until it's clear that the previous speaker is finished, who wait to be recognized, and who are inclined to link their comments to those of others will do fine at a meeting where everyone else is following the same rules but will have a hard time getting heard in a meeting with people whose styles are more like the first pattern. Given the socialization typical of boys and girls, men are more likely to have learned the first style and women the second, making meetings more congenial for men than for women. It's common to observe women who participate actively in one-on-one discussions or in all-female groups but who are seldom heard in meetings with a large proportion of men. On the other hand, there are women who share the style more common among men, and they run a different risk—of being seen as too aggressive.

A manager aware of those dynamics might devise any number of ways of ensuring that everyone's ideas are heard and credited. Although no single solution will fit all contexts, managers who understand the dynamics of linguistic style can develop more adaptive and flexible approaches to running or participating in meetings, mentoring or advancing the careers of others, evaluating performance, and so on. Talk is the lifeblood of managerial work, and understanding that different people have different ways of saying what they mean will make it possible to take advantage of the talents of people with a broad range of linguistic styles. As the workplace becomes more culturally diverse and business becomes more global, managers will need to become even better at reading interactions and more flexible in adjusting their own styles to the people with whom they interact. 

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IT'S NEGOTIABLE, 1994

Peter Strub

# 6

## NONVERBAL BEHAVIOR: THE LANGUAGES OF NEGOTIATING

Researchers in nonverbal communications claim that as much as 90 percent of the meaning transmitted between two people in face-to-face communications is via nonverbal channels. This means that as little as 10 percent of your verbal communication will have an impact on the outcome of your negotiations. If these figures are even close to reality, then the importance of nonverbal negotiation skills cannot be underestimated.

Albert Mehrabian, a professor at the University of California, Los Angeles, found that only 7 percent of people's feelings and attitudes are communicated with words; 38 percent of feelings are communicated via tone of voice, and an amazing 55 percent through nonverbal behaviors.<sup>4</sup> What is staggering about these percentages is that the communication channel you have the most control over, the verbal, has the least impact on your counterpart. And the channels over which you have the least control, vocal intonation and nonverbal behavior, have the most impact.

It has also been documented that in a thirty-minute negotiation, two people can send over 800 different nonverbal messages. Think back to the last time you conducted a negotiation. What was the stance or sitting position of your counterpart? Did he or she maintain eye contact with you? Were the person's arms or legs crossed? If neither

participant is aware or has an understanding of nonverbal behavior, both are communicating on a subconscious level. No wonder so many negotiations have a negative outcome!

### The Three Stages of Nonverbal Negotiations

Learning the art of perceiving nonverbal communications is almost as difficult as acquiring fluency in a foreign language. In addition to studying your own gestures and the meaning you are conveying to your counterpart, you must also become aware of your counterpart's nonverbal behavior. As you become more experienced at recognizing various nonverbal communications, you will pass through three distinct stages.

#### *Stage 1: Awareness of Your Counterpart*

After some initial training, you will begin to notice nonverbal signs your counterpart is displaying. Is he or she talking to you with arms or legs crossed? Is he or she looking at you eyeball to eyeball? Is the person covering his or her mouth while speaking to you or asking a question? You will begin to recognize clusters of signals that will tell you whether your counterpart is honest, trustworthy, bored, angry, or defensive. At this stage, you are not 100 percent certain how to handle these signals, but you are aware that something is going on.

#### *Stage 2: Awareness of Yourself*

After you become aware that your counterpart is telling you things without opening his or her mouth, you begin to realize that you also are communicating nonverbally. On one of my sales calls, I became aware that the buyer was sitting back in his chair with both his legs and arms crossed.

When it hit me that he wasn't being receptive, I questioned my own behavior. Sure enough, I was sitting back in my chair, with my briefcase in my lap and my legs crossed.

#### *Stage 3: Management of Self and Others Through Nonverbal Communications*

In the example above, I quickly changed my own nonverbal communication. When I put my briefcase on the floor beside my chair, slid forward in my seat, and uncrossed my legs, the buyer slowly began to change his position to a much more receptive one. Being able to manage your nonverbal behavior and, in turn, to manage the nonverbal behavior of your counterpart, is the ultimate in nonverbal communication. Body language reflects people's true feelings. The better you can speak the language, the better you will be able to understand the true meaning and feelings of your counterpart.

### Gestures Come in Clusters

Many skeptics have stated that it is difficult to tell what someone is thinking by singling out one gesture. Maybe you have heard a comment such as, "I am crossing my arms because I am cold, not because I am being defensive." The skeptics are somewhat right. A single gesture is like a word standing alone. It is difficult to understand out of context, and you cannot be sure of its true meaning. However, when gestures are fit together in clusters, they begin to take on some meaning that represents what is going on in your counterpart's mind. For example, someone who is not being honest or trustworthy would display a group of congruent gestures including a lack of eye contact, hands around the mouth, touching the face, and fidgeting.

The question usually arises, how accurate are nonverbal communications compared to verbal ones? D. A. Humphries, a British researcher, has found occasional dichotomies between obvious verbal and nonverbal meanings. After analyzing videotapes of conversations, he found that clusters of nonverbal gestures proved to be more accurate and truthful representations of each person's feelings.<sup>5</sup>

It will be difficult at first to be aware of nonverbal communications. But, like any language, if you study the nonverbal behavior of yourself and others on a daily basis, you will begin to recognize and understand the clustering process. Nonverbal communication is critical to negotiations because it lets you know when you must withdraw or do something different to obtain the outcome you desire.

When scanning a counterpart for clusters of gestures, a good formula to follow is to divide the body into five categories: the face and head, body, arms, hands, and legs

### *The Face and Head*

The face and head truly provide a window into your counterpart's soul. Here are some signs to look for:

- Someone who is trying to hide something will tend to avoid eye contact with you or break eye contact as he or she speaks untruthful words.
- Someone who is bored may gaze past you or glance around the room.
- Someone who is angry with you or feels superior may maintain piercing eye contact.
- Someone who is evaluating what you are saying may turn his or her head slightly to one side, almost as though wanting to hear you even better.

- Someone who is uncertain about what is being said may tilt his or her head slightly.
- Someone who is in agreement may nod his or her head as you are speaking.
- Someone who is being honest and trustworthy maintains good eye contact and will smile.

### *The Body*

The body also plays an important role in nonverbal communication. If your counterpart is leaning closer to you, you are making positive progress. The more your counterpart likes you, the closer he or she will be willing to position his or her body. When you say or do things that your counterpart disagrees with, he or she will tend to position his or her body away from you. To create a win/win outcome, you should always position your body toward your counterpart.

Here are other signs to watch for:

- Someone who is interested and in agreement will usually lean toward you or position his or her body closer to you.
- Someone who is in disagreement with, uncertain about, or bored with what you are saying will generally turn his or her body away from you or lean back farther in his or her chair.
- Someone who moves from side to side, shifting his or her weight may feel insecure, nervous, or in doubt.

### *The Arms*

Intensity is the key factor when monitoring the arms as a channel in nonverbal communication. In general, the more open the position of the arms, the more receptive your

counterpart is to the negotiation process. If your counterpart's arms are folded tightly across his or her chest, probably the person is not receptive to your communication.

The arms are one of the best indicators of changes in the nonverbal communication process. As you start the negotiation, your counterpart's arms may be resting in an open fashion on the table where you are both sitting. Then, when you mention that your company has a standard deposit of 50 percent on all first-time orders, the person may take his or her arms off the table and cross them over his or her chest. That would be a good indication that what you just said was not received well. Your words may need further clarification or, better yet, you should ask your counterpart whether he or she has a concern about the 50 percent deposit.

### *The Hands*

Nonverbal signals from the hands can be divided into three main categories: presentation of the palms, self-touching gestures, and involuntary hand movements.

First, open palms are generally considered a positive nonverbal message. This goes back to medieval days. Showing your counterpart open palms indicates that you have no weapons and nothing to hide.

Second, self-touching gestures to the nose, chin, ear, arm, or clothing usually indicate that your counterpart is nervous and lacks confidence about what he or she is saying. Just watch any baseball game. Before the batter steps up to the plate or the pitcher throws the ball, both are likely to dispel their nervousness by touching their hat, uniform, face, or groin.

Third, the most revealing hand gestures are involuntary hand movements. People have little ability to control

their true feelings, which are commonly revealed through the hands.

### *The Legs*

When asked why they cross their legs, most people will answer that they do so for comfort. Although they are being truthful, they are only partially correct. If you have ever crossed your legs for a long period of time, you know that this position can become painfully uncomfortable.

Crossing your legs can have a devastating effect on a negotiation. In a study described in *How to Read a Person Like a Book*, Gerard I. Nierenberg and Henry H. Calero found after videotaping 2,000 transactions that no sales were made by people who had their legs crossed.

If you want your counterpart to receive your message as being cooperative and trustworthy, you are better off if you do not cross your legs. With your legs uncrossed, your feet flat on the floor, and your body tilted slightly toward your counterpart, you will have a better chance of sending an open, positive signal.

# Thinking Strategically

The Competitive Edge in Business,  
Politics, and Everyday Life

Avinash K. Dixit and Barry J. Nalebuff

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# 1

## Ten Tales of Strategy

We begin with ten tales of strategy from different aspects of life and offer preliminary thoughts on how best to play. Many of you will have faced similar problems in everyday life, and will have reached the correct solution after some thought or trial and error. For others, some of the answers may be surprising, but surprise is not the primary purpose of the examples. Our aim is to show that such situations are pervasive, that they amount to a coherent set of questions, and that methodical thinking about them is likely to be fruitful. In later chapters, we develop these systems of thought into prescriptions for effective strategy. Think of these tales as a taste of dessert before the main course. They are designed to whet your appetite, not fill you up.

### 1. THE HOT HAND

Do athletes ever have a "hot hand"? Sometimes it seems that Larry Bird cannot miss a basket, or Wayne Gretzky or Diego Maradona a shot on goal. Sports announcers see these long streaks of consecutive successes and proclaim that the athlete has a "hot hand." Yet according to psychology professors Thomas Gilovich, Robert Vallone, and Amos Tversky, this is a misperception of reality.<sup>1</sup> They point out that if you flip a coin long enough, you will find some very long series of consecutive

heads. The psychologists suspect that sports commentators, short on insightful things to say, are just finding patterns in what amounts to a long series of coin tosses over a long playing season. They propose a more rigorous test. In basketball, they look at all the instances of a player's baskets, and observe the percentage of times that player's next shot is also a basket. A similar calculation is made for the shots immediately following misses. If a basket is more likely to follow a basket than to follow a miss, then there really is something to the theory of the hot hand.

They conducted this test on the Philadelphia 76ers basketball team. The results contradicted the "hot hand" view. When a player made his last shot, he was less likely to make his next; when he missed his previous attempt, he was more likely to make his next. This was true even for Andrew Toney, a player with the reputation for being a streak shooter. Does this mean we should be talking of the "stroboscopic hand," like the strobe light that alternates between on and off?

Game theory suggests a different interpretation. While the statistical evidence denies the presence of streak shooting, it does not refute the possibility that a "hot" player might warm up the game in some other way. The difference between streak shooting and a hot hand arises because of the interaction between the offensive and the defensive strategies. Suppose Andrew Toney does have a truly hot hand. Surely the other side would start to crowd him. This could easily lower his shooting percentage.

That is not all. When the defense focuses on Toney, one of his teammates is left unguarded and is more likely to shoot successfully. In other words, Toney's hot hand leads to an improvement in the 76ers' *team* performance, although there may be a deterioration in Toney's *individual* performance. Thus we might test for hot hands by looking for streaks in team success.

Similar phenomena are observed in many other team sports. A brilliant running-back on a football team improves its pass-

ing game and a great pass-receiver helps the running game, as the opposition is forced to allocate more of its defensive resources to guard the stars. In the 1986 soccer World Cup final, the Argentine star Diego Maradona did not score a goal, but his passes through a ring of West German defenders led to two Argentine goals. The value of a star cannot be assessed by looking only at his scoring performance; his contribution to his teammates' performance is crucial, and assist statistics help measure this contribution. In ice hockey, assists and goals are given equal weight for ranking individual performance.

A player may even assist himself when one hot hand warms up the other. The Boston Celtics star, Larry Bird, prefers shooting with his right hand (though his left hand is still better than most). The defense knows that Bird is right-handed, so they concentrate on defending against right-handed shots. But they do not do so exclusively, since Bird's left-handed shots are too effective to be left unguarded.

What happens when Bird spends his off season working to improve his left-handed shooting? The defense responds by spending more time covering his left-handed shots. The result is that this frees his right hand more often. A better left-handed shot results in a more effective right-handed shot. In this case not only does the left hand know what the right hand is doing, it's helping it out.

Going one step further, in Chapter 7 we show that when the left hand is stronger it may even be used *less* often. Many of you will have experienced this seemingly strange phenomenon when playing tennis. If your backhand is much weaker than your forehand, your opponents will learn to play to your backhand. Eventually, as a result of all this backhand practice, your backhand will improve. As your two strokes become more equal, opponents can no longer exploit your weak backhand. They will play more evenly between forehands and backhands. You get to use your better forehand more often; this could be the real advantage of improving your backhand.

## 2. TO LEAD OR NOT TO LEAD

After the first four races in the 1983 America's Cup finals, Dennis Conner's *Liberty* led 3-1 in a best-of-seven series. On the morning of the fifth race, "cases of champagne had been delivered to *Liberty*'s dock. And on their spectator yacht, the wives of the crew were wearing red-white-and-blue tops and shorts, in anticipation of having their picture taken after their husbands had prolonged the United States' winning streak to 132 years."<sup>2</sup> It was not to be.

At the start, *Liberty* got off to a 37-second lead when *Australia II* jumped the gun and had to recross the starting line. The Australian skipper, John Bertrand, tried to catch up by sailing way over to the left of the course in the hopes of catching a wind shift. Dennis Conner chose to keep *Liberty* on the right-hand side of the course. Bertrand's gamble paid off. The wind shifted five degrees in *Australia II*'s favor and she won the race by one minute and forty-seven seconds. Conner was criticized for his strategic failure to follow *Australia II*'s path. Two races later, *Australia II* won the series.

Sailboat racing offers the chance to observe an interesting reversal of a "follow the leader" strategy. The leading sailboat usually copies the strategy of the trailing boat. When the follower tacks, so does the leader. The leader imitates the follower even when the follower is clearly pursuing a poor strategy. Why? Because in sailboat racing (unlike ballroom dancing) close doesn't count: only winning matters. If you have the lead, the surest way to stay ahead is to play monkey see, monkey do.\*

Stock-market analysts and economic forecasters are not immune to this copycat strategy. The leading forecasters have an incentive to follow the pack and produce predictions similar to

\* This strategy no longer applies once there are more than two competitors. Even with three boats, if one boat tacks right and the other tacks left, the leader has to choose which (if either) to follow

everyone else's. This way people are unlikely to change their perception of these forecasters' abilities. On the other hand, newcomers take the risky strategies: they tend to predict boom or doom. Usually they are wrong and are never heard of again, but now and again they are proven correct and move to the ranks of the famous.

Industrial and technological competitions offer further evidence. In the personal-computer market, IBM is less known for its innovation than for its ability to bring standardized technology to the mass market. More new ideas have come from Apple, Sun, and other start-up companies. Risky innovations are their best and perhaps only chance of gaining market share. This is true not just of high-technology goods. Proctor and Gamble, the IBM of diapers, followed Kimberly Clark's innovation of resealable diaper tape, and recaptured its commanding market position.

There are two ways to move second. You can imitate as soon as the other has revealed his approach (as in sailboat racing) or wait longer until the success or failure of the approach is known (as in computers). The longer wait is more advantageous in business because, unlike sports, the competition is usually not winner-take-all. As a result, market leaders will not follow the upstarts unless they also believe in the merits of their course.

## 3. GO DIRECTLY TO JAIL

The conductor of an orchestra in the Soviet Union (during the Stalin era) was traveling by train to his next engagement and was looking over the score of the music he was to conduct that night. Two KGB officers saw what he was reading and, thinking that the musical notation was some secret code, arrested him as a spy. He protested that it was only Tchaikovsky's Violin Concerto, but to no avail. On the second day of his im-

prisonment, the interrogator walked in smugly and said, "You had better tell us all. We have caught your friend Tchaikovsky, and he is already talking."

So begins one telling of the prisoners' dilemma, perhaps the best-known strategic game. Let us develop the story to its logical conclusion. Suppose the KGB has actually arrested someone whose only offense is that he is called Tchaikovsky, and are separately subjecting him to the same kind of interrogation. If the two innocents withstand this treatment, each will be sentenced to 3 years' imprisonment.\* If the conductor makes a false confession that implicates the unknown "collaborator," while Tchaikovsky holds out, then the conductor will get away with 1 year (and the KGB's gratitude), while Tchaikovsky gets the harsh sentence of 25 years for his recalcitrance. Of course, the tables will be turned if the conductor stands firm while Tchaikovsky gives in and implicates him. If both confess, then both will receive the standard sentence of 10 years.†

Now consider the conductor's thinking. He knows that Tchaikovsky is either confessing or holding out. If Tchaikovsky confesses, the conductor gets 25 years by holding out and 10 years by confessing, so it is better for him to confess. If Tchaikovsky holds out, the conductor gets 3 years if he holds out, and only 1 if he confesses; again it is better for him to confess. Thus confession is clearly the conductor's best action.

In a separate cell in Dzerzhinsky Square, Tchaikovsky is doing a similar mental calculation and reaching the same conclusion. The result, of course, is that both of them confess. Later, when they meet in the Gulag Archipelago, they com-

\* There is the story of the newcomer to the Gulag who was asked by the residents, "How long is your sentence?" The answer was "Ten years." "What did you do?" "Nothing." "No, there must be some mistake. The sentence for that is only three years."

† This actually meant 3,653 days: "The three extra days were for leap years." (A. Solzhenitsyn, *One Day in the Life of Ivan Denisovich*, 1962.)

pare stories and realize that they have been had. If they both had stood firm, they both would have gotten away with much shorter sentences.

If only they had had an opportunity to meet and talk things over before they were interrogated, they could have agreed that neither would give in. But they are quick to realize that in all probability such an agreement would not have done much good. Once they were separated and the interrogations began, each person's private incentive to get a better deal by double-crossing the other would have been quite powerful. Once again they would have met in the Gulag, there perhaps to settle the score of the betrayals (not of the concerto). Can the two achieve enough mutual credibility to reach their jointly preferred solution?

Many people, firms, and even nations have been goaded on the horns of the prisoners' dilemma. Look at the life-or-death issue of nuclear arms control. Each superpower liked best the outcome in which the other disarmed, while it kept its own arsenal "just in case." Disarming yourself while the other remains armed was the worst prospect. Therefore no matter what the other side did, each preferred to stay armed. However, they could join in agreeing that the outcome in which both disarm is better than the one in which both are armed. The problem is the interdependence of decisions: the *jointly* preferred outcome arises when each chooses its *individually* worse strategy. Could the jointly preferred outcome be achieved given each side's clear incentive to break the agreement and to arm itself secretly? In this case it needed a fundamental change in Soviet thinking to get the world started on the road to nuclear disarmament.

For one's comfort, safety, or even life itself, one needs to know the ways to get out of the prisoners' dilemma. In Chapter 4 we look at some such avenues, and see when and how well they are likely to work.

The story of the prisoners' dilemma also carries a useful



general point: most economic, political, or social games are different from games such as football or poker. Football and poker are *zero-sum games*: one person's gain is another person's loss. But in the prisoners' dilemma, there are possibilities for mutual advantage as well as conflict of interest; both prisoners prefer the no-confession result to its opposite. Similarly, in employer-union bargaining, there is an opposition of interests in that one side prefers low wages and the other high ones, but there is agreement that a breakdown of negotiations leading to a strike would be more damaging for both sides. In fact such situations are the rule rather than the exception. Any useful analysis of games should be able to handle a mixture of conflict and concurrence of interests. We usually refer to the players in a game as "opponents," but you should remember that on occasion, strategy makes strange bedfellows.

#### 4. HERE I STAND

When the Catholic Church demanded that Martin Luther repudiate his attack on the authority of popes and councils, he refused to recant: "I will not recant anything, for to go against conscience is neither right nor safe." Nor would he compromise: "Here I stand, I cannot do otherwise."<sup>3</sup> Luther's intransigence was based on the divinity of his positions. When defining what was right, there was no room for compromise. His firmness had profound long-term consequences; his attacks led to the Protestant Reformation and substantially altered the medieval Catholic Church.\*

Similarly, Charles de Gaulle used the power of intransigence to become a powerful player in the arena of interna-

\* Luther's reputation extends beyond the Church and behind the Iron Curtain. The Wartburg, East Germany's domestically produced car, is jokingly referred to as "The Luther": apparently it can be equally immobile.

tional relations. As his biographer Don Cook expressed it, "[De Gaulle] could create power for himself with nothing but his own rectitude, intelligence, personality and sense of destiny."<sup>4</sup> But above all, his was "the power of intransigence." During the Second World War, as the self-proclaimed leader in exile of a defeated and occupied nation, he held his own in negotiations with Roosevelt and Churchill. In the 1960s, his presidential "Non!" swung several decisions France's way in the European Economic Community.

In what way did his intransigence give him power in bargaining? When de Gaulle took a truly irrevocable position, the other parties in the negotiation were left with just two options — to take it or to leave it. For example, he single-handedly kept England out of the European Economic Community, once in 1963 and again in 1968; the other countries were forced either to accept de Gaulle's veto or to break up the EEC. De Gaulle judged his position carefully to ensure that it would be accepted. But that often left the larger (and unfair) division of the spoils to France. De Gaulle's intransigence denied the other party an opportunity to come back with a counteroffer that was acceptable.

In practice, this is easier said than done, for two kinds of reasons. The first kind stems from the fact that bargaining usually involves considerations beside the pie on today's table. The perception that you have been excessively greedy may make others less willing to negotiate with you in the future. Or, next time they may be more firm bargainers as they try to recapture some of their perceived losses. On a personal level, an unfair win may spoil business relations, or even personal relations. Indeed, biographer David Schoenbrun faulted de Gaulle's chauvinism: "In human relations, those who do not love are rarely loved: those who will not be friends end up by having none. De Gaulle's rejection of friendship thus hurt France."<sup>5</sup> A compromise in the short term may prove a better strategy over the long haul.

The second kind of problem lies in achieving the necessary degree of intransigence. Luther and de Gaulle achieved this through their personalities. But this entails a cost. An inflexible personality is not something you can just turn on and off. Although being inflexible can sometimes wear down an opponent and force him to make concessions, it can equally well allow small losses to grow into major disasters.

Ferdinand de Lesseps was a mildly competent engineer with extraordinary vision and determination. He is famous for building the Suez Canal in what seemed almost impossible conditions. He did not recognize the impossible and thereby accomplished it. Later, he tried using the same technique to build the Panama Canal. It ended in disaster.\* Whereas the sands of the Nile yielded to his will, tropical malaria did not. The problem for de Lesseps was that his inflexible personality could not admit defeat even when the battle was lost.

How can one achieve selective inflexibility? Although there is no ideal solution, there are various means by which commitment can be achieved and sustained; this is the topic for Chapter 6.

## 5. BELLING THE CAT

In the children's story about belling the cat, the mice decide that life would be much safer if the cat were stuck with a bell around its neck. The problem is, who will risk his life to bell the cat?

This is a problem for both mice and men. How can rel-

\* The Suez Canal is a sea-level passage. The digging was relatively easy since the land was already low-lying and desert. Panama involved much higher elevations, lakes along the way, and dense jungle. Lesseps' attempt to dig down to sea level failed. Much later, the U.S. Army Corps of Engineers succeeded using a very different method — a sequence of locks, using the lakes along the way.

atively small armies of occupying powers or tyrants control very large populations for long periods? Why is a planeload of people powerless before a single hijacker with a gun? In both cases, a simultaneous move by the masses stands a very good chance of success. But the communication and coordination required for such action is difficult, and the oppressors, knowing the power of the masses, take special steps to keep it difficult. When the people must act individually and hope that the momentum will build up, the question arises, "Who is going to be the first?" Such a leader will pay a very high cost — possibly his life. His reward may be posthumous glory or gratitude. There are people who are moved by considerations of duty or honor, but most find the costs exceed the benefits.

Khrushchev first denounced Stalin's purges at the Soviet Communist Party's 20th Congress. After his dramatic speech, someone in the audience shouted out, asking what Khrushchev had been doing at the time. Khrushchev responded by asking the questioner to please stand up and identify himself. The audience remained silent. Khrushchev replied: "That is what I did, too."

In a sense, we have seen these examples before. They are just a prisoners' dilemma with more than two people; one might call this the hostages' dilemma. Here we want to use this dilemma to make a different point — namely, the frequent superiority of punishment over reward. The dictator might keep the populace peaceful by providing it material and even spiritual comforts, but this can be a very costly proposition. Oppression and terror relying on the Hostages' Dilemma can be a much cheaper alternative.

There are many examples of this principle. In a large taxi fleet, cars are often assigned to drivers by a dispatcher. The fleet has some good cars and some clunkers. The dispatcher can use his assignment power to extract a small bribe from each of the drivers. Any driver who refuses to pay is sure to get a clunker, while those who cooperate are given the luck

of the draw from the remainder.\* The dispatcher gets rich, and the drivers as a group end up with the same set of cabs that they would have if no one used bribery. If the drivers acted in collusion, they probably could stop this practice. The problem lies in getting the movement organized. The point is not so much that the dispatcher can reward those who bribe him, but that he can punish severely those who don't.

A similar story can be told about evicting tenants from rent-controlled apartments. If someone buys such a building in New York, he has the right to evict one tenant so as to be able to live in his own building. But this translates into a power to clear the whole. A new landlord can try the following argument with the tenant in Apartment 1A: "I have the right to live in my building. Therefore, I plan to evict you and move into your apartment. However, if you cooperate and leave voluntarily, then I will reward you with \$5,000." This is a token amount in relation to the value of the rent-controlled apartment (although it still buys a few subway tokens in New York). Faced with the choice of eviction with \$5,000 or eviction without \$5,000, the tenant takes the money and runs. The landlord then offers the same deal to the tenant in 1B, and so on.

The United Auto Workers have a similar advantage when they negotiate with the auto manufacturers sequentially. A strike against Ford alone puts it at particular disadvantage when General Motors and Chrysler continue to operate; therefore Ford is more likely to settle quickly on terms favorable to the Union. Such a strike is also less costly to the Union as only one third of their members are out. After winning against Ford, the Union takes on GM and then Chrysler, using each previous success as precedent and fuel for their fire. In contrast, Japanese union incentives work the other way,

\* Even if everyone pays, some drivers will end up with a clunker. But if the clunkers are randomly assigned, no driver faces a great chance of the bad draw. In contrast, the first driver who refuses to pay can expect to drive the clunker quite regularly.

since they are organized by company and have more profit sharing. If the Toyota unions strike, their members' incomes suffer along with Toyota's profits and they gain nothing from the precedent effect.

We are not saying that any or all of these are good outcomes or desirable policies. In some cases there may be compelling arguments for trying to prevent the kinds of results we have described. But to do so effectively, one has to understand the mechanism by which the problem arose in the first place — namely, an "accordion effect," where each fold pushes or pulls the next. This phenomenon arises again and again; but it can be countered, and we will show you how in Chapter 9.

## 6. THE THIN END OF THE WEDGE

Most countries use tariffs, quotas, and other measures to restrict import competition and protect domestic industries. Such policies raise prices, and hurt all domestic users of the protected product. Economists have estimated that when import quotas are used to protect industries such as steel, textiles, or sugar, the rest of us pay higher prices amounting to roughly \$100,000 for each job saved.<sup>6</sup> How is it that the gains to a few always get priority over the much larger aggregate losses to the many?

The trick is to bring up the cases one at a time. First, 10,000 jobs in the shoe industry are at risk. To save them would cost a billion dollars to the rest of us, or just over \$4 each. Who wouldn't agree to pay \$4 to save 10,000 jobs even for total strangers, especially when nasty foreigners can be blamed for their plight? Then along comes the garment industry, the steel industry, the auto industry, and so on. Before we know it, we have agreed to pay over \$50 billion, which is more than \$200 each, or nearly \$1,000 per family. If we had foreseen the whole process, we might have thought the cost

too high, and insisted that workers in each of these industries bear the risks of foreign trade just as they would have to bear any other economic risk. Decisions made case by case can lead to undesirable results overall. In fact, a sequence of majority votes can lead to an outcome that everyone regards as worse than the status quo.

The income tax reform of 1985–86 almost collapsed because the Senate initially took a case-by-case approach. In the first round of the Finance Committee's markup sessions, the amended Treasury proposal became so weighted down with special interest provisions that it sank to a merciful death. The senators realized that they were "powerless" to prevent any one organized lobby from getting special treatment. Yet the combination of these lobbyists could destroy the bill, and this would be worse than producing no legislation at all. So Senator Packwood, the committee chairman, made his own lobby: he persuaded a majority of the committee members to vote against *any* amendment to the tax bill, even those amendments that especially favored their own constituents. The reform was enacted. But special provisions are already staging a comeback, one or two at a time.

Along similar lines, the line-item veto would allow the president to veto legislation selectively. If a bill authorized money for school lunches and a new space shuttle, the president would have the option of neither, either, or both, instead of the current neither or both. Although a first reaction is that this allows the president greater control over legislation, the opposite might end up happening as Congress would be more selective about which bills it passes.\* While the line-item veto is generally thought to be unconstitutional, this question may have to be resolved by the Supreme Court.

\* Professor Douglas Holtz-Eakin of Columbia University has looked at the effects of line-item veto power at the state level. His results fail to detect any differences in spending when a line-item veto is available. This is discussed in greater detail in case study #10, following the chapter on voting.

These problems arise because myopic decision-makers fail to look ahead and see the whole picture. In the case of tax reform, the Senate recovered its vision just in time; the issue of protectionism still suffers. Chapter 2 develops a system for better long-range strategic vision.

## 7. LOOK BEFORE YOU LEAP

It is all too common for people to get themselves into situations that are difficult to get out of. Once you have a job in a particular city, it is expensive to resettle. Once you buy a computer and learn its operating system, it becomes costly to learn another one and rewrite all your programs. Travelers who join the frequent-flyer program of one airline thereby raise their cost of using another. And, of course, marriage is expensive to escape.

The problem is that once you make such a commitment, your bargaining position is weakened. Companies may take advantage of their workers' anticipated moving costs and give them fewer or smaller salary raises. Computer companies can charge higher prices for new, compatible peripheral equipment knowing that their customers cannot easily switch to a new, incompatible technology. Airlines, having established a large base of frequent flyers, will be less inclined to engage in fare wars. A couple's agreement that they will split the housework 50:50 may become subject to renegotiation once a child is born.

Strategists who foresee such consequences will use their bargaining power while it exists, namely, before they get into the commitment. Typically, this will take the form of a payment up front. Competition among the would-be exploiters can lead to the same result. Companies will have to offer more attractive initial salaries, computer manufacturers will have to charge sufficiently low prices for their central processing units (CPUs), and airline frequent-flyer programs will have to offer

larger signing-on mileage bonuses. As for married couples, exploitation may be a game that two can play.

The same foresight is what prevents many curious but rational people from trying addictive drugs such as heroin. A Tom Lehrer song describes the drug dealer's ploy:

"He gives the kids free samples  
Because he knows full well  
That today's young innocent faces  
Will be tomorrow's clientele."

Smart kids know it too, and turn down the free samples.

## 8. MIX YOUR PLAYS

Let us return for a moment to the world of sports. In football, before each snap of the ball the offense chooses between passing and running while the defense organizes itself to counter one of these plays. In tennis, the server might go to the forehand or the backhand of the receiver, while the receiver, in turn, can try to return crosscourt or down the line. In these examples, each side has an idea of its own strong points and of its opponent's weaknesses. It will have a preference for the choice that exploits these weaknesses, *but not exclusively*. It is well understood, by players and sports fans alike, that one should mix one's plays, randomly throwing in the unexpected move. The point is that if you do the same thing all the time, the opposition will be able to counter you more effectively by concentrating its resources on the best response to your one strategy.

Mixing your plays does not mean rotating your strategies in a predictable manner. Your opponent can observe and exploit any systematic pattern almost as easily as he can the unchanging repetition of a single strategy. It is *unpredictability* that is important when mixing.

Imagine what would happen if there were some known formula that determined who would be audited by the IRS. Before you submitted a tax return, you could apply the formula to see if you would be audited. If an audit was predicted, but you could see a way to "amend" your return until the formula no longer predicted an audit, you probably would do so. If an audit was unavoidable, you would choose to tell the truth. The result of the IRS being completely predictable is that it would audit exactly the wrong people. All those audited would have anticipated their fate and chosen to act honestly, while those spared an audit would have only their consciences to watch over them. When the IRS audit formula is somewhat fuzzy, everyone stands some risk of an audit; this gives an added incentive for honesty.

There are similar phenomena in the business world. Think of competition in the market for razors. Imagine that Gillette runs a coupon promotion on a regular schedule — say, the first Sunday of every other month. Bic can preempt Gillette by running a competing coupon promotion the week before. Of course, Bic's move is then predictable and Gillette can preempt the week before. This process leads to cutthroat competition and both make less profit. But if each uses an unpredictable or mixed strategy, together they might reduce the fierceness of the competition.

The importance of randomized strategies was one of the early insights of game theory. The idea is simple and intuitive but needs refinement if it is to be useful in practice. It is not enough for a tennis player to know that he should mix his shots between the opponent's forehand and backhand. He needs some idea of whether he should go to the forehand 30 percent or 64 percent of the time and how the answer depends on the relative strengths of the two sides. In Chapter 7 we develop methods to answer such questions.

## 9. NEVER GIVE A SUCKER AN EVEN BET

In *Guys and Dolls*, gambler Sky Masterson relates this valuable advice from his father:

“Son, one of these days in your travels a guy is going to come to you and show you a nice brand-new deck of cards on which the seal is not yet broken, and this guy is going to offer to bet you that he can make the jack of spades jump out of the deck and squirt cider in your ear. But son, do not bet this man, for as sure as you stand there you are going to wind up with cider in your ear.”

The context of the story is that Nathan Detroit had offered Sky Masterson a bet about whether Mindy’s sold more strudel or cheesecake. Nathan had just discovered the answer (strudel) and was willing to bet if Sky would bet on cheesecake.

This example may sound somewhat extreme. Of course no one would take such a sucker bet. But look at the market for futures contracts on the Chicago Board of Exchange. If another speculator offers to sell you a futures contract, he will make money only if you lose money. This deal is a *zero-sum* game, just like sports competitions, in which one team’s victory is the other’s loss. Hence if someone is willing to sell a futures contract, you should not be willing to buy it. And vice versa.

The strategic insight is that other people’s actions tell us something about what they know, and we should use such information to guide our own action. Of course, we should use this in conjunction with our own information concerning the matter and use all strategic devices to elicit more from others.

In the *Guys and Dolls* example, there is a simple device of this kind. Sky should ask Nathan at what odds he would be willing to take the cheesecake side of the bet. If the answer is “not at any odds,” then Sky can infer that the answer must be strudel. If Nathan offers the same odds for both strudel and cheesecake, he is hiding his information at the cost of giving Sky the opportunity to take an advantageous gamble.

In stock markets, foreign exchange markets, and other financial markets, people are free to take either side of the bet in just this way. Indeed, in some organized exchanges, including the London stock market, when you ask for a quote on a stock the market-maker is required to state both the buying and selling prices *before* he knows which side of the transaction you want. Without such a safeguard, market-makers could stand to profit from private information, and the outside investors’ fear of being suckered might cause the entire market to fold. The buy and sell prices are not quite the same; the difference is called the bid-ask spread. In liquid markets the spread is quite small, indicating that little information is contained in any buy or sell order. On the other hand, Nathan Detroit is willing to bet on strudel at any price and on cheesecake at no price; his bid-ask spread is infinity. Beware of such market-makers.

We should add that Sky had not really learned his father’s teaching very well. A minute later he bet Nathan that Nathan did not know the color of his own bowtie. Sky cannot win: if Nathan knows the color, he takes the bet and wins; if he does not, he declines the bet and does not lose.

## 10. GAME THEORY CAN BE DANGEROUS TO YOUR HEALTH

Late one night, after a conference in Jerusalem, two American economists found a licensed taxicab and gave the driver directions to their hotel. Immediately recognizing them as American tourists, the driver refused to turn on his meter; instead, he proclaimed his love for Americans and promised them a lower fare than the meter. Naturally, they were somewhat skeptical of this promise. Why should this stranger offer to charge less than the meter when they were willing to pay

the metered fare? How would they even know whether or not they were being overcharged?\*

On the other hand, they had not promised to pay the driver anything more than what would be on the meter. If they were to start bargaining and the negotiations broke down, they would have to find another taxi. Their theory was that once they arrived at the hotel, their bargaining position would be much stronger. And taxis were hard to find.

They arrived. The driver demanded 2,500 Israeli shekels (\$2.75). Who knew what fare was fair? Because people generally bargain in Israel, they protested and counter-offered 2,200 shekels. The driver was outraged. He claimed that it would be impossible to get from there to here for that amount. Before negotiations could continue, he locked all the doors automatically and retraced the route at breakneck speed, ignoring traffic lights and pedestrians. Were they being kidnapped to Beirut? No. He returned to the original position and ungraciously kicked the two economists out of his cab, yelling, "See how far your 2,200 shekels will get you now."

They found another cab. This driver turned on his meter, and 2,200 shekels later they were home.

Certainly the extra time was not worth the 300 shekels to the economists. On the other hand, the story was well worth it. It illustrates the dangers of bargaining with those who have not yet read our book. More generally, pride and irrationality cannot be ignored. Sometimes, it may be better to be taken for a ride when it costs only two dimes.<sup>†</sup>

There is a second lesson to the story. Think of how much

\* If the driver wanted to prove that he was going to charge less than the meter, he could have turned on the meter as asked and then charged 80 percent of the price. The fact that he did not should have told something about his intentions; see the Sky Masterson story just above.

† The two who learned this lesson in game theory, and lived to tell the tale, were John Geanakoplos of Yale University, and one of your authors, Barry Nalebuff.

stronger their bargaining position would have been if they had begun to discuss the price after getting out of the taxi. (Of course, for hiring a taxi, this logic should be reversed. If you tell the driver where you want to go before getting in, you may find your taxi chasing after some other customer. Get in first, then say where you want to go.)

## 11. THE SHAPE OF THINGS TO COME

The examples have given us glimpses of principles that guide strategic decisions. We can summarize these principles with a few "morals" from our tales.

The story of the hot hand told us that in strategy, no less than in physics, "For every action we take, there is a reaction." We do not live and act in a vacuum. Therefore, we cannot assume that when we change our behavior everything else will remain unchanged.

De Gaulle's success in negotiations suggests that "the stuck wheel gets the grease."\* But being stubborn is not always easy, especially when one has to be more stubborn than an obstinate adversary.

The tale from the Gulag and the story of belling the cat demonstrate the difficulty of obtaining outcomes that require coordination and individual sacrifice. The example of trade policy highlights the danger of solving problems piece by piece. In technology races no less than in sailboat races, those who trail tend to employ more innovative strategies; the leaders tend to imitate the followers.

Tennis and tax audits point out the strategic advantage of being unpredictable. Such behavior may also have the added advantage that it makes life just a little more interesting.

\* You may have heard this expression as the "squeaky wheel" — a stuck wheel needs even more grease. Of course, sometimes it gets replaced.

We could go on offering more examples and drawing morals from them, but this is not the best way to think methodically about strategic games. That is better done by approaching the subject from a different angle. We pick up the principles — for example, commitment, cooperation, and mixing — one at a time. In each instance, we select examples that bear centrally on that issue, until the principle is clear. Then you will have a chance to apply the principle in the case studies that end each chapter.

## 12. CASE STUDY #1: RED I WIN, BLACK YOU LOSE

While we might never get the chance to skipper in an America's Cup race, one of us found himself with a very similar problem. At the end of his academic studies, Barry celebrated at one of Cambridge University's May Balls (the English equivalent of a college prom). Part of the festivities included a casino. Everyone was given \$20 worth of chips, and the person who had amassed the greatest fortune by evening's end would win a free ticket to next year's ball. When it came time for the last spin of the roulette wheel, by a happy coincidence, Barry led with \$700 worth of chips, and the next closest was a young Englishwoman with \$300. The rest of the group had been effectively cleaned out. Just before the last bets were to be placed, the woman offered to split next year's ball ticket, but Barry refused. With his substantial lead, there was little reason to settle for half.

To better understand the next strategic move, we take a brief detour to the rules of roulette. The betting in roulette is based on where a ball will land when the spinning wheel stops. There are typically numbers 0 through 36 on the wheel. When the ball lands on zero, the house wins. The safest bet

in roulette is to bet on even or odd (denoted by Black or Red). These bets pay even money — a one-dollar bet returns two dollars — while the chance of winning is only 18/37. Even betting her entire stake would not lead to victory at these odds; therefore, the woman was forced to take one of the more risky gambles. She bet her entire stake on the chance that the ball would land on a multiple of three. This bet pays two to one (so her \$300 bet would return \$900 if she won) but has only a 12/37 chance of winning. She placed her bet on the table. At that point it could not be withdrawn. What should Barry have done?

### Case Discussion

Barry should have copied the woman's bet and placed \$300 on the event that the ball landed on a multiple of three. This guarantees that he stays ahead of her by \$400 and wins the ticket: either they both lose the bet and Barry wins \$400 to \$0, or they both win the bet and Barry ends up ahead \$1,300 to \$900. The woman had no other choice. If she did not bet, she would have lost anyway; whatever she bet on, Barry could follow her and stay ahead.\*

Her only hope was that Barry would bet first. If Barry had been first to place \$200 on Black, what should she have done? She should have bet her \$300 on Red. Betting her stake on Black would do her no good, since she would win only when Barry wins (and she would place second with \$600 compared with Barry's \$900). Winning when Barry lost would be her only chance to take the lead, and that dictates a bet on Red.

The strategic moral is the opposite from that of our tale of Martin Luther and Charles de Gaulle. In this tale of roulette,

\* If truth be told, this is what Barry wished he had done. It was 3:00 in the morning and much too much champagne had been drunk for him to have been thinking this clearly. He bet \$200 on the even numbers figuring that he would end up in second place only in the event that he lost and she won, the odds of which were approximately 5:1 in his favor. Of course 5:1 events sometimes happen and this was one of those cases. She won.



the person who moved first was at a disadvantage. The woman, by betting first, allowed Barry to choose a strategy that would guarantee victory. If Barry had bet first, the woman could have chosen a response that offered an even chance of winning. The general point is that in games it is not always an advantage to seize the initiative and move first. This reveals your hand, and the other players can use this to their advantage and your cost. Second movers may be in the stronger strategic position.

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# NEGOTIATION

## Second Edition

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The frequency of international negotiations is increasing rapidly as business becomes more international in scope and extent. Thus, international negotiations have become the norm for many organizations, rather than an exotic activity that occurs only occasionally. Numerous books and articles, from both academic and practitioner perspectives, have been written about the complexities of negotiating across borders, be it with a person from a different country, culture, or region. Although culture has many aspects, we will use the term to refer to the shared values and beliefs of a group of people. Culture describes group-level characteristics, which may or may not be good descriptors of any given individual within the group. (For example, countries can have more than one culture and cultures can span national borders.) With this caveat in mind, we will use the terms *culture* and *country* loosely in this chapter to refer to negotiation across borders (legal or cultural). As we discussed in Chapters 2 and 9, negotiating is a social process that is imbedded in a much larger context. This context becomes more complex when more than one culture is involved, making negotiation a much more complicated process when it occurs across borders. Far too much has been written on this topic to summarize in one chapter (for examples, see Binnendijk, 1987; Foster, 1992; Habeeb, 1988; Hendon and Hendon, 1990; Kremenyuk, 1991; Lukov, 1985; Mautner-Markhof, 1989; for earlier work, see Fayerweather and Kapoor, 1976; Hall, 1960; Van Zandt, 1970). Our goal is simply to highlight and discuss some of the most recent and interesting work that has been written on this topic.

It is important to recognize that this book has been written from an American perspective (United States and Canada),<sup>1</sup> and that this cultural filter has influenced how we think about negotiation, what we consider to be important aspects of negotiation, and our advice about how to become better negotiators. This chapter will also reflect our own cultural filter, both in our choices about what we discuss and because we will use Americans as the base from which to make comparisons to other cultures. That is not to say that all Americans reflect the same culture. In fact, there is evidence that people from countries as similar as the United States and Canada negotiate differently (see Adler and Graham, 1987;

<sup>1</sup> The primary author is a Canadian. We are not implying that Canadians should or do consider themselves "American." Rather, we will use the American standard as the basis by which comparisons can be drawn to all other cultures.

Adler, Graham, and Schwarz, 1987), and that within the United States and Canada, there are systematic regional and cultural differences (for example, English and French Canada; Hispanics, African Americans, the South, the Southwest, and other areas and populations in the United States). At some level, however, Americans do share (more or less) a common culture that is different from other cultures and countries. While recognizing the differences within America, we will use the common aspects of American culture to discuss the effects of culture on negotiating with people from other countries and cultures.

This chapter is organized in the following manner. First we will present the results of a program of research that has demonstrated that negotiators in different countries use different negotiation processes to reach the same negotiation outcomes. Then we will discuss some of the factors that make negotiations across borders more difficult, including political, economic, legal, and cultural considerations. The next section describes a model of international negotiation that can help organize the many aspects of cross-border negotiations and act as a guide in preparation for these negotiations. We then turn to a discussion of perhaps the most critical issue that negotiators face when they negotiate across borders: the effect of culture, be it national, regional, or organizational. We discuss how culture can be conceptualized in cross-border negotiations, how academics and practitioners use the concept of culture, and the influence of culture on negotiations. The next section of the chapter specifically examines the negotiating style of three countries in the Pacific Rim: Japan, China, and Korea. We decided to choose these three cultures because of the volume of business negotiations with these cultures and because we cannot possibly cover all possible cultures in a single chapter (for specific attention to negotiation processes in other cultures, see Acuff, 1993; Hendon and Hendon, 1990; Kennedy, 1985). Although there are similarities in negotiation styles across these three countries, there are also important differences of which the cross-border negotiator needs to be aware. The chapter concludes with a discussion of the options available to the international negotiator for managing these negotiations.

## NOT EVERYONE NEGOTIATES LIKE AMERICANS!

Graham and his colleagues (see Graham, 1993 for a review) have conducted a series of experiments comparing negotiators from the United States and 15 other countries, including Japan, China, Canada, Brazil, and Mexico. These studies each used the same research materials—a version of the buyer/seller negotiation simulation developed by Kelley (1966), in which negotiators have to decide on the prices of three products (televisions, typewriters, air conditioners). The participants in the studies were businesspeople who were either attending management seminars or graduate business courses. Participants in all these studies negotiated with people from their own countries (these were intracultural negotiations, not cross-cultural negotiations). The major dependent measures in these studies were (1) the individual profit level made by the two negotiators in the simulation and (2) the level of satisfaction that the negotiators had with the negotiation outcomes.

The results of this research have been quite consistent across studies. Graham and his colleagues found no differences in the profit levels obtained by negotiators in the simulation from the United States and the other countries studied, including: Japan (Graham, 1983, 1984), China (Adler, Brahm, and Graham, 1992), Canada (Adler and Graham, 1987; Adler, Graham, and Schwarz, 1987), Brazil (Graham, 1983), and Mexico (Adler, Graham, and Schwartz, 1987). Taken as a whole, these results suggest that negotiators from the different countries studied were equally effective in obtaining negotiation outcomes. One conclusion from this research, then, is that business negotiators from different countries appear to obtain similar negotiation outcomes when they negotiate with other people from their own country.

Graham and Adler did find, however, that there were significant differences in the negotiation *process* in the countries that they studied. In other words, although negotiators from different countries obtained the same outcome, *the way that they negotiated to obtain that outcome was quite different*. For instance, Graham (1983) concludes that “in American negotiations, higher profits are achieved by making opponents feel *uncomfortable*, while in Japanese negotiations, higher profits are associated with making opponents feel *comfortable*” (p. 63). In addition, Graham (1983) reports that Brazilian negotiators who used powerful and deceptive strategies were more likely to receive higher outcomes; these strategies were not related to the outcomes attained by the American negotiators. Further, Adler, Graham, and Schwartz, (1987) report that representational strategies (gathering information) were negatively related to profits attained by Mexican and French-Canadian negotiators, whereas these strategies were unrelated to the profits that American negotiators received. Finally, although Adler, Brahm, and Graham (1992) found that Chinese and American negotiators used similar negotiation strategies when they negotiated, their communication patterns were quite different—the Chinese asked more questions, said “no” less frequently, and interrupted each other more frequently than did American negotiators.

Adler and Graham (1989) also conducted a study in which they compared intracultural and cross-cultural negotiation outcomes and processes. They found that Japanese and English-Canadian negotiators received lower profit levels when they negotiated cross-culturally than when they negotiated intraculturally; American and French-Canadian negotiators negotiated the same average outcomes in cross-cultural and intracultural negotiations. These results support Adler and Graham’s hypothesis that cross-cultural negotiations will result in poorer outcomes, at least some of the time. In addition, Adler and Graham found some differences in the cross-cultural negotiation process. For instance, French-Canadian negotiators used more cooperative strategies in cross-cultural negotiations than in intracultural negotiations, and American negotiators reported higher levels of satisfaction with their cross-cultural negotiations (versus intracultural negotiations).

In summary, this program of research suggests that negotiators from different cultures (countries) use different negotiation strategies and communication patterns when they negotiate with other people from their own culture. Importantly, however, there was *no* difference in the negotiation outcomes attained by the

negotiators across these studies. This suggests that there are many different ways to negotiate agreements that are, on average, worth the same value, and that a negotiator must employ the process that “fits” the culture they are in. Further, the culture of the negotiator appears to be an important predictor of the negotiation process that will occur and how negotiation strategies will influence negotiation outcomes in different cultures. In addition, this research suggests that cross-cultural negotiations may yield poorer outcomes than intracultural negotiations, at least on some occasions.

### WHAT MAKES CROSS-BORDER NEGOTIATIONS DIFFERENT?

Salacuse (1988) has suggested six factors that make cross-border negotiations more challenging than domestic negotiations. These factors can act to limit or constrain organizations that operate in the international arena, and it is important that negotiators who bargain across borders understand and appreciate their effects.

#### Political and Legal Pluralism

When organizations make business deals that cross a national border, they come into contact with the legal and political system of another country. There may be implications for the taxes that the organization pays, the labor codes or standards that they must meet, and the different codes of contract law and standards of enforcement (e.g., case law versus common law versus no functioning legal system, for instance). In addition, political considerations may enhance or detract from the conduct of business negotiations in various countries at different times (compare the open business environment in the former Soviet bloc in the 1990s with the closed environment of the 1960s).

#### International Economic Factors

The value of international currencies naturally fluctuates, and this factor must be considered when making deals across borders. Which currencies will the deal be made in? According to Salacuse (1988), the risk is typically greater for the party who must pay in the other country's currency. The less stable the currency, the greater the risk for both parties. In addition, any change in the value of a currency (upwards or downwards) can significantly affect the value of the deal for both parties, changing a mutually valuable deal into a windfall profit for one and a large loss for the other. Many countries also control the currency flowing across their borders. Frequently, purchases within these countries may only be made with “hard” currencies that are brought into the country by foreign parties, and domestic organizations are unable to purchase foreign products or negotiate outcomes that require payment in foreign currencies.

#### Foreign Governments and Bureaucracies

Countries differ in the extent to which the government regulates industries and organizations. Organizations in the United States are relatively free from government intervention, although some industries are more heavily regulated (e.g., power generation, defense) and some states have tougher environmental regulations than others. Generally, however, business negotiations in the United States occur without government approval, and the parties to a negotiation decide whether to engage in a deal based on business reasons alone. Contrast this with the situation in many developing and (former) communist countries. Imports into these countries are closely supervised by the government, and frequently an agency of the government has a monopoly in dealing with foreign organizations (Salacuse, 1988). In addition, political considerations, such as the effect of the negotiations on the government treasury, the general economy of the country, and other social conditions, may influence the negotiations more heavily than what Western businesspeople would consider to be “legitimate” business reasons.

#### Instability

Although the world continues to change at a rapid pace, businesspeople negotiating domestically in the United States are accustomed to a degree of stability that has not been present in many areas of the world. Instability may take many forms, including a lack of resources that Americans commonly expect during business negotiations (paper, electricity, computers), shortages of personal care products (e.g., food, reliable transportation, potable water), and political instability (coups, sudden shifts in government policy, major currency revaluations). The challenge for negotiators in these situations is to predict these changes accurately, and with enough lead time to adjust for their consequences if they occur. Salacuse suggests that negotiators faced with unstable circumstances should include clauses in their contracts that allow for easy cancellation or neutral arbitration, and they should investigate purchasing insurance policies to guarantee contract provisions. This advice presumes that contracts will be honored and that specific contract clauses like these are culturally acceptable to the other party.

#### Ideology

Negotiators within the United States generally share a common ideology of individualism and capitalism. According to Salacuse, this includes a strong belief in individual rights, the superiority of private investment, and the importance of making a profit in business. Negotiators from other countries do not always share this ideology. The ideology in many other countries stresses group rights as more important than individual rights and public investment as a better allocation of resources than private investment, and it has different prescriptions for earning and sharing profit. Clashing ideologies increase the communication challenges in cross-border negotiations in the broadest sense because the parties may disagree on the most fundamental levels about what is being negotiated.

## Culture

People from different cultures appear to negotiate differently. In addition to behavioral differences in negotiation across borders, different cultures may also interpret the fundamental processes of negotiations differently (such as what factors are negotiable and the purpose of the negotiations). According to Salacuse, people in some cultures approach negotiations deductively (they move from the general to the specific) whereas people from other cultures are more inductive (they settle on a series of specific issues that become the area of general agreement). On a more fundamental level, cultures appear to differ on what is actually being negotiated. In some cultures, negotiation occurs over the content of what is discussed and the relationship between the parties is incidental. In other cultures, the relationship between the parties is the main focus of the negotiation, and the content of the deal itself is incidental. One does not have to leave the United States to see the influence of culture on negotiations. Contrast the negotiation described in Box 14.1 with the stereotypical business negotiator from Wall Street. Clearly there is a large challenge negotiating across borders when the fundamental beliefs about what negotiation is and how it occurs can be very different. We will spend most of the remainder of this chapter exploring different aspects of this issue in more detail.

### BOX 14.1

#### Cross-Cultural Negotiations within the United States

I had a client in West Virginia who bought from me for several years. He had a family business that he'd started in a small town with his grandfather, and it had now grown to be the major employer in the town. We had developed quite a close relationship. Every few months, I would make a trip up from North Carolina to see him, knowing after a while that he would need to place an order with me as long as I spaced our visits out every few months. When we got together, at first we would talk about everything but business, catching up with each other. I would ask him about his life, the business, his family, the town, etc., and he would ask me about my work and the company and life in the big city in North Carolina where I lived and worked. Once we'd caught up with each other, we would get down to some business, and this was often after lunch. Each and every time, it would take a few hours of this and that, but I'd always leave with an order, and it was always a pleasant break, at least for me, from my usual hectic pace.

One day I phoned in preparation for my next trip, to see if he would be in, to arrange a convenient day, and he told me that he'd like me to meet a friend of his next time I was up there to visit him. His friend, he said, was interested in some of the things my company was selling, and he thought I should meet him. Of course I was delighted, and we arranged a convenient day for the three of us to meet.

When I arrived at my client's office, his friend, Carl, was already there. We were very casually introduced, and my client began explaining Carl's work, and how he

### Box 14.1 (continued)

thought what my company sold could be useful to him. Carl then took over and spoke a little about what he did, and I thought for a moment that we were going to go straight into business talk. However, in just a few moments, the conversation between the three of us quickly turned back to discussions of life in town, North Carolina, our respective families, and personal interests. It turned out that Carl liked to hunt, and he and my client began regaling me with stories of their hunting adventures. I'd hunted a little, and shared my stories with them. One thing led to another, and soon we were talking about vacations, the economy, baseball—you name it.

Occasionally, we would make a brief journey back to the business at hand, but it always seemed to be in conjunction with the small talk, like how the tools we manufactured were or were not as precise as the mechanisms on the guns we used for hunting, things like that. I realized that quite a lot of information about our mutual work, my company, their needs, and their work, was being exchanged in all this, even though business was never directly addressed. I remember the first few meetings my client and I had had with each other many years ago—how we learned about each other this way then, too. I was struck with how quaint it felt now, how different it was from the way I usually had to sell, and yet how much I enjoyed working like this!

Well, our discussions went on this way through the rest of the morning, weaving some business back and forth through the larger context of informal chit-chat about each other and our lives. Just before lunch, my client leaned back and began what seemed to be a kind of informal summary of who I was and what I did, and how what I did seemed to him to be just the thing that Carl and his company could use. Carl agreed, and my client asked him, almost on my behalf, how much he wanted to order, and Carl thought for a moment and gave me the biggest order I ever got from West Virginia. "Now that that's done," my client said, "how about some lunch?" We all went to the same place we always go to when I'm in West Virginia, talking about life and things and some business. By midafternoon I said I had to be heading home. We all agreed to stay in touch. We've been in touch ever since, and now I've got two clients to visit whenever I'm in West Virginia.

D.A. Foster, *Bargaining Across Borders: How to Negotiate Business Successfully Anywhere in the World* (New York: McGraw-Hill, 1992), pp. 108–109. Reproduced with the permission of McGraw-Hill.

## THE RBC MODEL OF INTERNATIONAL NEGOTIATIONS

One of the challenges to understanding international negotiations is the sheer complexity of factors that can influence the process and outcome of negotiations across borders. Conducting research in this area is also complex. Researchers have many choices to make in their studies, including levels of analysis (individuals, groups, organizations), countries and cultures to be examined, and aspects of the negotiation process and outcome to study. Summarizing and organizing this information to make comparisons across studies has become a challenge in this area of research.

Weiss (1993) has proposed his "RBC" Model of International Negotiation to organize the wide variety of research findings in international negotiation and to facilitate future research and theory in a systematic manner. The RBC Model proposes that three aspects are necessary to understand international business negotiations: *relationships*, *behaviors*, and *conditions*.<sup>2</sup> Its strength is that it can organize fragments of research that examine only one or two of the many possible aspects of international negotiation and allow meaningful comparisons to be drawn across different studies. Figure 14.1 presents the RBC Model for a two-party case. Although the figure may be thought of as a snapshot of circumstances at one point in time, the model should be used in an iterative fashion—in other words, things that happen today may change the snapshot of the model tomorrow. Each of the three aspects of the model will now be described in more detail.

### Relationships

The *relationships* aspect of the model delineates the connections between the parties in the negotiation. These connections can occur on many levels between two organizations, and they may be positive, neutral, or negative. For instance, two organizations may be connected through a joint venture agreement. Two teams may be connected within an organization (e.g., the domestic and international marketing groups), or teams may be connected across organizations (e.g., two teams charged with making a joint venture work). And two individuals may be connected across the organizations, such as the heads of the production departments of a parent organization and its foreign subsidiary. These relationships may be parallel (e.g., CEO with CEO) or they may occur cross-level, such as between the CEO of one organization meeting with a team from the other.

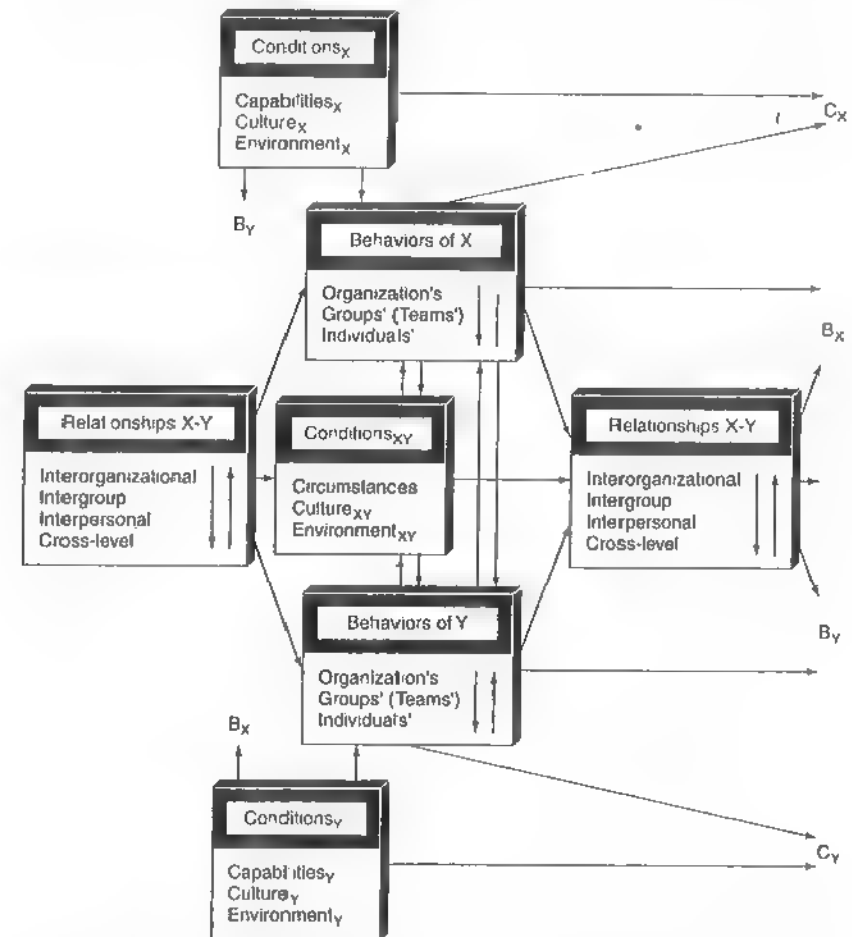
### Behaviors

The *behaviors* of the parties to a negotiation may be examined as well, from the organizational, group, and individual level. They may also be intentional or unintentional. Weiss suggests that six types of behavior are important to understand:

1. *Independent*—undertaken by a party itself and relevant to the negotiation, but not communicated to the other primary party (e.g., planning).
2. *Horizontal*—action directed at the counterpart, typically at the negotiating table.
3. *Internal*—activity within a party, such as a negotiating team.
4. *Vertical*—a party's communications with its superior or subordinate.
5. *Lateral*—nonvertical, negotiation-relevant actions directed at a party's peers or colleagues.

<sup>2</sup> These aspects are important to understand any negotiation, but we will concentrate on their role in international negotiations in this chapter.

FIGURE 14.1 RBC Model of International Negotiation: The Bilateral (x-y) Case.



S.E. Weiss. (1993). Analysis of Complex Negotiations in International Business: The RBC Perspective. *Organizational Science*, 4, 269–300.

6. *External*—directed beyond the negotiation setting and the primary parties (e.g., to mass media) (Weiss, 1993, pp. 279–286).

Each of these behaviors can occur at each of three levels of analysis for a party (with the exception of internal behavior, which only occurs at the individual level), and each may also occur across relationship levels.

## Conditions

The final box in the RBC Model is *Conditions*. These are factors that affect the behaviors and relationships in the negotiation in either a positive or negative fashion. Four types of conditions are included in the model: circumstances, capabilities, culture, and environment. *Circumstances* refer to the structure of the negotiations themselves and include factors such as communication channels, the presence of third parties, media coverage, and the negotiation site. *Capabilities* refer to the skills, resources, and traits of a party that enable it to influence and be influenced by a counterpart. *Culture* refers to the way that a negotiation party interprets information in the negotiation and in the broader social context. Culture may be national, ethnic, regional, or organizational. Finally, *environment* refers to the broader sociopolitical factors, such as government policies, foreign exchange markets, and the general political environment that have an influence on the negotiations.

The RBC Model provides a rich framework for understanding, organizing, describing, and categorizing a wide variety of international negotiations. Although the model does not lead to empirical predictions per se, it does provide a framework for understanding the factors that are examined across a variety of international studies. The model also aids comparisons across different research projects by allowing a straightforward comparison of the factors included and excluded in different projects. Finally, the model offers practitioners a powerful guide for preparing for international negotiations by outlining numerous factors that should be considered during planning.

## CULTURE: A CRITICAL FACTOR

One construct that has frequently been used to explain differences in negotiation across borders is *culture*. Although the term *culture* has taken on many different meanings, we use it to refer to the shared values and beliefs held by the members of a group. Cultures are considered to be stable over time. Perhaps the most comprehensive and extensive program of research identifying and exploring different cultural dimensions in international business was conducted by Hofstede (1980a and 1980b, 1989, 1991). Hofstede examined data on values that had been gathered from over 100,000 IBM employees from around the world (to date, over 53 cultures and countries have been included in his study). Statistical analysis of this data suggests that four dimensions could describe the important differences among the cultures in the study. Table 14.1 lists the countries included in the study and their ranking on the four dimensions described below.

### Power Distance

This dimension describes “the extent to which the less powerful members of organizations and institutions (like the family) accept and expect that power is distributed unequally” (Hofstede, 1989, p. 195). According to Hofstede, cultures with greater power distance will be more likely to have decision making concen-

**TABLE 14.1** Ranking of Countries/Cultures on Cultural Dimensions Reported by Hofstede (1991)

Country	Rank Order On			
	Power Distance	Individualism/Collectivism	Masculinity/Femininity	Uncertainty Avoidance
Arab Countries	7	26/27	23	27
Argentina	35/36	22/23	20/21	10/15
Australia	41	2	16	37
Austria	53	18	2	24/25
Belgium	20	8	22	5/6
Brazil	14	26/27	27	21/22
Canada	39	4/5	24	41/42
Chile	24/25	38	46	10/15
Colombia	17	49	11/12	20
Costa Rica	42/44	46	48/49	10/15
Denmark	51	9	50	51
East Africa	21/23	33/35	39	36
Ecuador	8/9	52	13/14	28
Finland	46	17	47	31/32
France	15/16	10/11	35/36	10/15
Germany F.R.	42/44	15	9/10	29
Great Britain	42/44	3	9/10	47/48
Greece	27/28	30	18/19	1
Guatemala	2/3	53	43	3
Hong Kong	15/16	37	18/19	49/50
India	10/11	21	20/21	45
Indonesia	8/9	47/48	30/31	41/42
Iran	29/30	24	35/36	31/32
Ireland (Rep.)	49	12	7/8	47/48
Israel	52	19	29	19
Italy	34	7	4/5	23
Jamaica	37	25	7/8	52
Japan	33	22/23	1	7
Malaysia	1	36	25/26	46
Mexico	5/6	32	6	18
Netherlands	40	4/5	51	35
New Zealand	50	6	17	39/40
Norway	47/48	13	52	38
Pakistan	32	47/48	25/26	24/25
Panama	2/3	51	34	10/15
Peru	21/23	45	37/38	9
Philippines	4	31	11/12	44
Portugal	24/25	33/35	45	2
Salvador	18/19	42	40	5/6
Singapore	13	39/41	28	53
South Africa	35/36	16	13/14	39/40
South Korea	27/28	43	41	16/17
Spain	31	20	37/38	10/15



**TABLE 14.1** Ranking of Countries/Cultures on Cultural Dimensions Reported by Hofstede (1991) (*continued*)

Country	Rank Order On.			
	Power Distance	Individualism/Collectivism	Masculinity/Femininity	Uncertainty Avoidance
Sweden	47/48	10/11	53	49/50
Switzerland	45	14	4/5	33
Taiwan	29/30	44	32/33	26
Thailand	21/23	39/41	44	30
Turkey	18/19	28	32/33	16/17
Uruguay	26	29	42	4
U.S.	38	1	15	43
Venezuela	5/6	50	3	21/22
West Africa	10/11	39/41	30/31	34
Yugoslavia	12	33/35	48/49	8

Based on G. Hofstede, *Culture and Organizations, Software of the Mind* (London, England: McGraw Hill, 1991).

trated at the top, and all of the important decisions will have to be finalized by the leader. The consequences for international negotiations are that negotiators from large power distance cultures may need to seek approval from their supervisors more frequently, and for more issues, leading to a slower negotiation process.

### Individualism/Collectivism

This dimension describes the extent to which the society is organized around individuals or the group. Individualistic societies encourage their young to be independent and to look after themselves. Collectivistic cultures, on the other hand, integrate individuals into very cohesive groups that take responsibility for the welfare of each individual. Hofstede suggests that the focus on relationships in collectivist societies plays a critical role in negotiations—negotiations with the same party can continue for years and changing a negotiator changes the relationship, which may take a long time to rebuild. Contrast this with more individualistic societies, in which negotiators are considered more interchangeable, and competency, rather than relationship, is a more important consideration when choosing negotiators. The consequences are that negotiators from collectivist cultures will strongly depend on cultivating and sustaining a long-term relationship, whereas negotiators from individualistic cultures may be more likely to “swap” negotiators, using whatever short-term criteria seem appropriate.

### Masculinity/Femininity

Hofstede found that cultures differed in the extent to which they held values that were traditionally perceived as masculine, such as “assertiveness, the acqui-

sition of money and things, and *not* caring for others, the quality of life, or people” (Hofstede, 1980a, p. 46). According to Hofstede (1989), this dimension influences negotiating by increasing the competitiveness when negotiators from masculine cultures meet; negotiators from feminine cultures are more likely to have empathy for the other party and to seek compromise.

### Uncertainty Avoidance

The fourth dimension identified by Hofstede “indicates to what extent a culture programs its members to feel either uncomfortable or comfortable in unstructured situations” (1989, p. 196). Unstructured situations are characterized by rapid change and novelty whereas structured situations are stable, secure, and more absolutist. Negotiators from uncertainty avoidance cultures are not comfortable with ambiguous situations and are more likely to seek stable rules and procedures when they negotiate. Negotiators from cultures more comfortable with unstructured situations are more likely to adapt to quickly changing situations and will be less uncomfortable when the rules of the negotiation are ambiguous or shifting.

Hofstede's dimensions have received a great deal of attention in cross-cultural research and international business. Although the model is not without criticism (see, e.g., Kale and Barnes, 1992; Triandis, 1982), it is fair to say that it has become a dominating force in cross-cultural research in international business. Little research exploring the effects of Hofstede's dimensions on negotiation has been conducted, however, and the extent to which these dimensions influence cross-cultural and intracultural negotiations needs to be further explored (see Foster, 1992). At this point in time, our interpretations of the effects of these dimensions on negotiations should be considered tentative.

### Other Approaches to Cultural Differences

Although culture is considered by many international negotiation experts as the critical factor in negotiations across borders, there are in fact many different uses of the concept in this area. Janosik (1987) has identified four ways that culture has been used in international negotiation. Although there are similarities and differences among the four ways, each approach *does* stress the importance of understanding how culture effects negotiation.

**Culture as Learned Behavior.** This approach to understanding the effects of culture concentrates on documenting the systematic negotiation behavior of people in different cultures. It is a pragmatic, nuts-and-bolts approach to understanding the effects of culture, and rather than focusing on why members of a given culture behave in certain ways, it concentrates upon creating a catalog of behaviors that the foreign negotiator should expect when entering a host culture (Janosik, 1987). Many of the books and articles in the popular press (e.g., Axtell, 1990, 1991, 1993) use the concept of culture as learned behavior in negotiations across

borders, yielding lists of “do’s and don’ts” to obey when negotiating with people from various cultures. For instance, Solomon (1987) suggests that people negotiating with the Chinese should recognize that they will begin negotiations with a search for broad principles and building a relationship. This will be followed by a long period of assessment where the boundaries of the relationship will be explored. A decision about whether or not to strike an agreement will eventually be made, and this agreement will form the foundation for further concessions and modifications.

**Culture as Shared Values.** This approach concentrates on understanding the central values and norms of a culture and then building a model for how these norms and values influence negotiations within that culture. Cross-cultural comparisons are made by finding the important norms and values that distinguish one culture from another and then understanding how these differences will influence negotiation across borders. While the “culture as behavior” approach concentrates exclusively on behavior, the “culture as shared values” approach recognizes that thought precedes behavior and seeks to understand how culture influences those thought processes (Janosik, 1987). For example, a central value in American culture is individualism. Americans are expected to make individual decisions, defend their points of view, and take strong stands on issues that are important to them. Contrast this with a central value of the Chinese culture, collectivism. Chinese negotiators are expected to make group decisions, defend the group above the individual, and take strong stands on issues important to the group. When American and Chinese people negotiate, their differences in the individualism/collectivism cultural value may be expected to influence negotiations in many ways. For instance: (1) the Chinese will be likely to take more time when negotiating because they have to gain the consensus of their group before they strike a deal; (2) the Chinese use of multiple lines of authority will lead to mixed signals about the true needs of the group, and no single individual may understand all of the requirements; and (3) because power is shared by many different people and offices it may be difficult for foreigners to identify their appropriate counterpart in the Chinese bureaucracy (Pye, 1992).

**Culture as Dialectic.** The third approach to using culture to understand negotiation across borders identified by Janosik (1987) recognizes that all cultures contain tensions, called *dialectics*, among their different values. These tensions are nicely illustrated in maxims from the Judeo-Christian (European) tradition. Consider the following examples: “Too many cooks spoil the broth” and “Two heads are better than one.” These proverbs offer conflicting guidance for those considering whether to work on a task alone or in a group, reflecting a dialectic, or tension, within the Judeo-Christian tradition about the values of independence and teamwork. Neither total independence nor complete teamwork works all of the time; each has advantages and disadvantages that vary as a function of the circumstances (for instance, the type of decision to be made or task to be addressed). According to Janosik (1987), the “culture as dialectic” approach has

advantages over the “culture as shared values” approach because it can explain variations within cultures (i.e., not every person in a culture shares the same values to the same extent). Although this may yield more accurate academic understanding of the effects of culture on international negotiations, it does not yet offer very clear guidelines for practitioners faced with negotiations across borders.

**Culture in Context.** Proponents of the fourth approach to using culture to understand negotiations across borders recognize that no human behavior is determined by a single cause. Rather, all behavior may be understood at many different levels simultaneously, and a social behavior as complex as negotiation is determined by many different factors, one of which is culture. Other factors that may be important determinants of negotiation behavior include personality, social context, and environmental factors. In other words, proponents of the “culture in context” approach recognize that negotiation behavior is multiply determined, and using culture as the sole explanation of behavior is oversimplifying a complex social process. Many academic models of negotiation recognize the multiple determinants of negotiation behavior and are excellent guides for research and understanding negotiation. As the models become more complex, however, they may become less useful for practitioners of negotiation across borders because they are just too complex to put into practice (Janosik, 1987).

### How Do Cultural Differences Influence Negotiations?

Given that these cultural differences exist, can be measured, and operate on different levels, the issue becomes how they influence negotiations. Adopting work by Weiss and Stripp (1985), Foster (1992) suggests that culture can influence negotiations across borders in at least eight different ways.

**Definition of Negotiation.** The fundamental definition of what negotiation is, or of what occurs when we negotiate, can differ greatly across cultures. For instance, “Americans tend to view negotiating as a competitive process of offers and counteroffers, while the Japanese tend to view the negotiation as an opportunity for information-sharing” (Foster, 1992, p. 272).

**Selection of Negotiators.** The criteria used to select who will participate in the negotiations varies across cultures. These criteria can include knowledge of the subject matter being negotiated, seniority, family connections, gender, age, experience, and status. Different cultures weigh these criteria differently, leading to varying expectations about what is appropriate in different types of negotiations.

**Protocol.** Cultures differ in the degree to which protocol, or the formality of the relations between the two negotiating parties, is important. American culture is among the least formal cultures in the world. The use of first names, ignoring titles, and a generally familiar communication style are quite common. Contrast this with the situation in other cultures. Many European countries (e.g.,

France, Germany, England) are very formal, and not using the proper title when addressing someone (e.g., Mr., Dr., Professor, Lord) is considered very insulting (see Braganti and Devine, 1992). Formal calling cards or business cards are always used in many countries in the Pacific Rim (e.g., China, Japan), and they are essential for introductions there. Negotiators who forget to bring business cards or who write messages on them are frequently breaching protocol and insulting their counterpart (Foster, 1992). Even the way that business cards are presented, hands are shaken, or people dress are subject to interpretation by negotiators and can be the foundation of attributions about a person's background and personality.

**Communication.** Cultures influence the way that people communicate, both verbally and nonverbally. There are also differences in body language across cultures; the same behavior may be highly insulting in one culture and completely innocuous in another (Axtell, 1991). To avoid insulting the other party in negotiations across borders, the international negotiator needs to observe cultural rules of communication carefully. For example, the truly international negotiator needs to heed the following advice:

Never touch a Malay on the top of the head, for that is where the soul resides. Never show the sole of your shoe to an Arab, for it is dirty and represents the bottom of the body, and never use your left hand in Muslim culture, for it is reserved for physical hygiene. Touch the side of your nose in Italy and it is a sign of distrust. Always look directly and intently into your French associate's eye when making an important point. Direct eye contact in Southeast Asia, however, should be avoided until the relationship is firmly established. If your Japanese associate has just sucked air in deeply through his teeth, that's a sign you've got real problems. Your Mexican associate will want to embrace you at the end of a long and successful negotiation; so will your Central and Eastern European associates, who may give you a bear hug and kiss you three times on alternating cheeks. Americans often stand farther apart than their Latin and Arab associates but closer than their Asian associates. In the United States people shake hands forcefully and enduringly; in Europe a handshake is usually quick and to the point; in Asia, it is often rather limp. Laughter and giggling in the West Indies indicates humor; in Asia, it more often indicates embarrassment and humility. Additionally, the public expression of deep emotion is considered ill-mannered in most countries of the Pacific Rim; there is an extreme separation between one's personal and public selves. The withholding of emotion in Latin America, however, is often cause for mistrust. (D. A. Foster, *Bargaining Across Borders: How to Negotiate Business Successfully Anywhere in the World* (New York: McGraw Hill, 1992), p. 281. Reproduced with the permission of McGraw Hill).

Clearly, there is a lot of information about how to communicate that an international negotiator must remember in order not to insult, anger, or embarrass the other party during negotiations. Many culture-specific books and articles have been written that provide considerable advice to international negotiators about how to communicate in various cultures, and this is an essential aspect of planning for negotiations that cross borders (Binnendijk, 1987; Graham and Sano, 1989; Pye, 1992; Tung, 1991).

**Time.** Cultures have a large effect on defining what time means and how it affects negotiations. In the United States, people tend to respect time. This is shown by appearing for meetings on time, being sensitive to not wasting the time of other people, and a general belief that "faster" is better than "slower" because it symbolizes high productivity. Other cultures have quite different views about time. In more traditional societies, especially in hot climates, the pace is slower than in the United States. This tends to reduce the focus on time, at least in the short term. Americans are perceived by other cultures as enslaved by their clocks, because time is watched carefully and guarded as a valuable resource. In some cultures, such as China and Latin America, time per se is not important. The focus of negotiations is on the task, regardless of the amount of time that it takes. The opportunity for misunderstandings because of different perceptions of time is great during cross-cultural negotiations. Americans may be perceived as always being in a hurry and as flitting from one task to another. Chinese or Latin American negotiators, on the other hand, may appear to the American to be doing nothing and wasting the American's time.

**Risk Propensity.** Cultures vary in the extent to which they are willing to take risks. Some cultures produce quite bureaucratic, conservative decision makers who want a great deal of information before making decisions. Other cultures produce negotiators who are more entrepreneurial and who are willing to act and take risks when they have incomplete information (e.g., "nothing ventured, nothing gained"). According to Foster (1992), Americans fall on the risk-taking end of the continuum, some Asians may be even more risk oriented, and some European cultures are quite conservative (such as Greece). The orientation of a culture toward risk will have a large effect on what is negotiated and the content of the negotiated outcome. Risk-oriented cultures will be more willing to move early on a deal and will generally take more chances. Risk-avoiding cultures will seek further information and will be more likely to take a wait-and-see stance.

**Groups versus Individuals.** Cultures differ according to whether they emphasize the individual or the group. The United States is very much an individual-oriented culture, where being independent and assertive is valued and praised. Group-oriented cultures, on the other hand, favor the superiority of the group and the individual comes second to the group's needs. Group-oriented cultures value fitting in and reward loyal team players; those who dare to be different are socially ostracized, a large price to pay in a group-oriented society. This cultural difference can have a variety of effects on negotiation. Americans are more likely to have one individual who is responsible for the final decision, whereas group-oriented cultures like the Chinese are more likely to have a group responsible for the decision. Decision making in the group-oriented cultures involves consensus making and may take considerably more time than American negotiators are used to. In addition, because so many people can be involved in the negotiations in group-oriented cultures, and because their participation may be

sequential rather than simultaneous, American negotiators may be faced with a series of discussions over the same issues and materials with many different people. In a negotiation in China, one of the authors of this book met with more than six different people on successive days, going over the same ground with different negotiators and interpreters, until the negotiation was concluded.

**Nature of Agreements.** Culture also has an important effect both on concluding agreements and on what form the negotiated agreement takes. In the United States, agreements are typically based on logic (e.g., the low-cost producer gets the deal), are often formalized, and are enforced through the legal system if such standards are not honored. In other cultures, however, obtaining the deal may be based on who you are (e.g., your family or political connections) rather than what you can do. In addition, agreements do not mean the same thing in all cultures. Foster (1992) notes that the Chinese frequently use memorandums of agreement to formalize a relationship and to signal the *start* of negotiations (mutual favors and compromise). Frequently, however, Americans will interpret the *same* memorandum of agreement as the *completion* of the negotiations that is enforceable in a court of law. Again, cultural differences in how to close an agreement and what exactly that agreement means can lead to confusion and misunderstandings when we negotiate across borders.

In summary, a great deal has been written about the importance of culture in cross-border negotiations. Hofstede (1989) suggests that there are four important dimensions that can be used to describe cultural differences: power distance, individualism/collectivism, masculinity/femininity, and uncertainty avoidance. Academics and practitioners may use the term *culture* to mean different things, but they agree that it is a critical aspect of international negotiation that can have a broad influence on many aspects of the process and outcome of negotiations across borders.

## SOME SPECIFIC COUNTRY NEGOTIATION STYLES

Many books describing the negotiation styles of selected countries have been written. It is not possible for us to present in a single chapter on international negotiation the detail that these books contain. To give you a sample of this literature, we have included brief descriptions of the negotiation styles of three countries in the Pacific Rim. Each of the countries has an increasingly important relationship with the United States, and each is in the same geographic region. There are similarities and differences in the styles across the three countries, which make the comparison useful for our purposes. The international negotiator who is planning negotiations with counterparts from one of these countries (or any other country, for that matter) is well advised to consult more extensive materials on national negotiation styles than is presented here (see Graham and Sano, 1989; Pye, 1992; Thayer and Weiss, 1987; Tung, 1991; Acuff, 1993; Griffin and Daggatt, 1990; Harris and Moran, 1987; Hendon and Hendon, 1990).

### Negotiating with the Japanese

Japan and the United States have a special relationship, both historically and currently (Thayer and Weiss, 1987). Political, economic, and business relationships between the two countries are frequently in the news, and understanding how Japan has become an economic superpower is a frequent topic of conversation for Americans. Not surprisingly, how to negotiate with the Japanese has also been an important topic that has received attention from both academics and practitioners.

Graham and Sano (1989) have written one of the most comprehensive treatments of how to negotiate with the Japanese. They note that two critical values in Japan are the avoidance of conflict and the promotion of harmony. These cultural values have a pronounced effect on how Japanese negotiate. One way that they promote these values is through the presence of a strong social hierarchy, which has an important influence on business relationships. Larger organizations have an enormous amount of power and status, and the status relationship between the negotiating parties may be more important in determining the outcome of negotiations than the actions of the parties during negotiations (Graham and Sano, 1989). With the greater power comes more responsibility, however, and larger buyers must make sure that they consider the needs of smaller sellers when they negotiate.

Another aspect of negotiation in Japan that flows from their cultural values is a long-term time perspective on negotiation. Because relationships are expected to last a lifetime, Japanese are very cautious about entering a relationship and take care to evaluate the long-term implications of doing business together. The focus on relationships influences many aspects of negotiation. At the early stages, the two negotiating parties will spend a large proportion of their time in what may appear to an American as non-negotiation activities, including lavish entertainment, sporting and cultural events, and ceremonial gift-giving. The purpose of these activities is to get to know the other party and to build strong interconnections. The consequences of this relationship-building is that during later stages of negotiation the parties feel free to make large demands upon each other because they have a special relationship. As far as the process of negotiations is concerned, Japanese negotiators are very polite while negotiating and are very reluctant to say no (because it may hurt harmony). In addition, what is *not* said during negotiations is as important as what is spoken. Rather than saying no, Japanese negotiators may say nothing or may tell the other party that "it will be difficult to agree to the proposal." Frequently, expressions of agreement will simply indicate that the Japanese heard the other party correctly, but not that they agree with the substance of what was said (see Box 14.2).

Graham and Sano make many recommendations about how Americans can improve their negotiations with the Japanese. They suggest that choosing the negotiation team is critical—members of the team should be flexible and committed to the process. During preparations, the influence of time on the negotiation process needs to be considered explicitly. According to Graham and Sano, the negotiation itself may be viewed as having four stages: nontask discussions

### BOX 14.2 A Simple "Hai" Won't Do

When a TV announcer here reported Bill Clinton's comment to Boris Yeltsin that when the Japanese say yes they often mean no, he gave the news with an expression of mild disbelief.

Having spent my life between East and West, I can sympathize with those who find the Japanese yes unfathomable. However, the fact that it sometimes fails to correspond precisely with the Occidental yes does not necessarily signal intended deception. This was probably why the announcer looked bewildered, and it marks a cultural gap that can have serious repercussions.

I once knew an American who worked in Tokyo. He was a very nice man, but he suffered a nervous breakdown and went back to the United States tearing his hair and exclaiming, "All Japanese businessmen are liars." I hope this is not true. If it were, all Japanese businessmen would be driving each other mad, which does not seem to be the case. Nevertheless, since tragedies often arise from misunderstandings, an attempt at some explanation might not be amiss.

A Japanese yes in its primary context simply means the other person has heard you and is contemplating a reply. This is because it would be rude to keep someone waiting for an answer without supplying him with an immediate response.

For example: A feudal warlord marries his sister to another warlord. (I am back to TV.) Then he decides to destroy his newly acquired brother-in-law and besieges the castle. Being human, though, the attacking warlord worries about his sister and sends a spy to look around. The spy returns and the lord inquires eagerly, "Well, is she safe?" The spy bows and answers, "*Hai*," which means yes. We sigh with relief, thinking, "Ah, the fair lady is still alive!" But then the spy continues, "To my regret she has fallen on her sword together with her husband."

*Hai* is also an expression of our willingness to comply with your intent even if your request is worded in the negative. This can cause complications. When I was at school, our English teacher, a British nun, would say, "Now children, you won't forget to do your homework, will you?" And we would all dutifully chorus, "Yes, mother," much to her consternation.

A variation of *hai* may mean, "I understand your wish and would like to make you happy but unfortunately . . ." Japanese being a language of implication, the latter part of this estimable thought is often left unsaid.

Is there, then, a Japanese yes that corresponds to the Western one? I think so, particularly when it is accompanied by phrases such as "*sodesu*" (it is so) and "*soshimasu*" (I will do so).

A word of caution against the statement, "I will think about it." Though in Tokyo this can mean a willingness to give one's proposal serious thought, in Osaka, another business center, it means a definite no. This attitude probably stems from the belief that a straightforward no would sound too brusque.

When talking to a Japanese person, it is perhaps best to remember that although he may be speaking English, he is reasoning in Japanese. And if he says, "I will think about it," you should inquire as to which district of Japan he hails from before going on with your negotiations.

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where the relationship is explored, task-related information exchange, persuasion, and concessions and agreement. Finally, the negotiations will typically conclude with a signing ceremony that has important symbolic value.

### Negotiating with the Chinese

Since the normalization of relations with China began over 20 years ago, American-Sino business relationships have been growing at a rapid pace. Negotiations have often been a difficult process for both sides, for cultural and other reasons (Pye, 1992). Pye suggests that cultural differences between China and the United States present an enormous challenge for negotiations across this border. According to Pye, there are numerous cultural differences between the two countries, but two are particularly important. First, while Americans are a legalistic culture, the Chinese stress ethics and moral principles. Thus, Americans turn to the court system to resolve serious differences of opinion and to enforce contracts. The Chinese, on the other hand, would be more likely to apply ethical and moral principles in group discussion to resolve differences of opinion with harmony. The second critical cultural difference between the two cultures is the pervasive importance of politics in all aspects of Chinese life. No decision can be made without awareness of the political consequences, and the Chinese take a great deal of care to not make a mistake (not making a decision is safer than making a mistake).

Solomon (1987) notes that Chinese negotiators are very skilled at using pressure tactics to gain advantage during negotiations. These tactics include good guy-bad guy, extreme demands, creating competition among adversaries, pressuring third parties to influence the adversary, and sacrificing other negotiations to demonstrate resolve. Patience is a highly valued cultural virtue in China, and Chinese negotiators can delay years until they feel the time is right to conclude a deal.

Pye suggests many principles that American negotiators should follow when negotiating with the Chinese. A critical principle is *patience*. The Chinese bureaucracy is large and the political implications of all decisions must be understood before they are made. This can take a considerable amount of time, and the American negotiator needs patience to accept this. Pye labeled another principle "restrained steadfastness." When working towards building a relationship, the Chinese seek reliability, dignity, and reserve. They are not impressed by effusiveness, which can be misinterpreted as impatience. A third principle is to take agreements about general principles seriously. These agreements are critical to the Chinese who will use them later to enforce other aspects of the agreement. In addition, Pye points out that Americans need to avoid making exaggerated claims to the Chinese because they will be asked to deliver them at a later date (and nondelivery will result in attributions about the negotiator's degree of ethics and morality).

### Negotiating with Koreans

Korea has had one of the fastest growing economies in the last 20 years and is an increasingly important negotiating partner with the United States. While Koreans have a solid understanding of the American negotiating style, Americans

are only just beginning to examine the Korean approach to business negotiation (Tung, 1991). Rosalie Tung has examined 18 U.S.-Korea joint business ventures in detail and has identified some important characteristics about the Korean negotiating style. Compared to other countries in the Pacific Rim, the Koreans can make decisions rapidly. Many Korean organizations are family run, and this tends to make determining the line of authority and source of decision-making power a clear task. On the other hand, Koreans will frequently send junior people (with limited authority) to the negotiation table as a delaying tactic to gain further concessions (Tung, 1991).

Although the relationship is important to Korean negotiators, they are not afraid to be direct and confrontational during negotiations. Perhaps more disturbing to the American negotiator is the fact that the Korean counterpart can occasionally appear somewhat irrational and inconsistent (Tung, 1991). Tung attributes this behavior to *kibun*, the personal feelings or inner voice the Korean negotiator listens to during negotiation. Finally, Tung argues that Korean negotiators are not blindly driven by profit. Rather, they seem to focus on long-term objectives like growth and increasing market share. Tung's advice for negotiating with Koreans is to be patient, understand and appreciate Korean culture and customs, and recognize that *who* you are will have an influence on the way that relationships are formed.

We have only briefly described some of the important aspects of the Japanese, Chinese, and Korean negotiation styles and the similarities and differences between them and the American negotiation style. The international negotiator needs to prepare carefully for negotiations that cross borders—the range of options open to the international negotiator for managing negotiations across borders is discussed in the next section of this chapter.

## CULTURALLY RESPONSIVE NEGOTIATION STRATEGIES

Although a great deal has been written about international negotiation and the extra challenges that occur when negotiating across borders, cultures, or nationalities, far less attention has been paid to what the individual negotiator should specifically *do* when faced with negotiating with someone from another culture. The advice by many theorists in this area, either explicitly or implicitly, has been, “when in Rome, act as the Romans do” (see Francis, 1991, and Weiss, in press, for reviews of the possible oversimplicity of this advice). In other words, negotiators are advised to be aware of the effects of cultural differences on negotiation and to take them into account when they negotiate. Much of the material discussed in this chapter reflects this tendency. Many theorists appear to assume implicitly that the best way to manage cross-border negotiations is to be sensitive to the cultural norms of the person with whom you are negotiating and to modify your strategy to be consistent with behaviors that occur in that culture (contrast this with the less culturally sensitive views that “business is business everywhere in the world” and the other party can adapt to your style of negotiating, that style is unimportant, or, more arrogantly, that my style should dictate what you do).

Although it is important to avoid cultural gaffes when negotiating, it is *not* clear that the best approach is to modify your strategy to match the other person's approach.

Several factors indicate that negotiators should *not* make large modifications to their approach when they negotiate across borders.

1. Negotiators may not be able to modify their approach *effectively*. It takes years to understand another culture deeply, and you may not have the time necessary to gain this understanding before beginning negotiations. Although a little understanding of another culture is clearly better than total ignorance, it may not be enough to make effective adjustments to your negotiation strategy. Attempting to match the strategies and tactics used by negotiators in another culture is a daunting task that requires fluency in their language as a precondition.

2. Even if negotiators can modify their approach effectively, it does not mean that this will translate automatically into a better negotiation outcome for their side. It is quite possible that the other side will modify their approach too. The results in this situation can be disaster, with each side trying to act like the other “should” be acting, and both sides not really understanding what the other party is doing. Consider the following example contrasting typical American and Japanese negotiation styles. Americans are more likely to start negotiations with an extreme offer in order to leave room for concessions. Japanese are more likely to start negotiations with gathering information in order to understand who they are dealing with and what the relationship will be. Assume that both parties understand their own and the other party's cultural tendencies (this is a large assumption that frequently is not met). Now assume that each party, acting out of respect for the other, decides to “act like the Romans do” and to adopt the approach of the other party. The possibilities for confusion are endless. When the Americans gather information about the Japanese are they truly interested or are they playing a role? It will be clear that they are not acting like Americans, but the strategy that they are using may not be readily identified. How will the Americans interpret the Japanese behavior? The Americans have prepared well for their negotiations and understand that the Japanese do not present extreme positions early in negotiations. When the Japanese *do* present an extreme position early in negotiations (in order to adapt to the American negotiation style), how should the Americans interpret this behavior? The Americans likely will think “that must be what they really want because they don't open with extreme offers.” Adopting the other party's approach does not guarantee success, and in fact may lead to more confusion than acting like yourself (where at least your behavior is understood within your own cultural context).

3. Research suggests that negotiators may naturally negotiate differently when they are with people from their own culture than when they are with people from other cultures (Adler and Graham, 1989). The implications of



this research are that a deep understanding of how people in other cultures negotiate, such as two Japanese people negotiating with each other, may not help an American negotiating with a Japanese.

4. Research by Francis (1991) suggests that moderate adaptation may be more effective than “acting as the Romans do.” In a simulation study of Americans’ responses to negotiators from other countries, Francis found that negotiators from a familiar culture (Japan) who made moderate adaptations to American ways were perceived more positively than negotiators who made no changes or those that made large adaptations. Although these findings did not replicate for negotiators from a less familiar culture (Korea), more research needs to be conducted to understand why. At the very least, the results of this study suggest that large adaptations by international negotiators will not always be effective.

Recent theoretical work by Weiss (in press) has advanced our understanding of the options that people have when negotiating with someone from another culture. Weiss observes that a negotiator may be able to choose among up to eight different culturally responsive strategies. These strategies may be used individually or sequentially, and the strategies can be switched as the negotiations progress. According to Weiss, when choosing a strategy the negotiators should be aware of their own and the other party’s culture in general, understand the specific factors in the current relationship, and predict or try to influence the other party’s approach. Weiss’s culturally responsive strategies may be arranged into three groups, based on the familiarity that a negotiator has with the other party’s culture. Within each group there are some strategies that the negotiator may use individually (unilateral strategies) and others that involve the participation of the other party (joint strategies).

### Low Familiarity

**Employ Agents or Advisors (unilateral strategy).** One approach for negotiators who have very low familiarity with the other party’s culture is to hire an agent or advisor who is familiar with the cultures of both parties. This relationship may range from having the other party conduct the negotiations under your supervision (agent) to receiving regular or occasional advice during the negotiations (advisor). Although using an agent or advisor may create other problems (such as tensions between that person and yourself) they may be quite useful for negotiators who have little awareness of the other’s culture and little time to become aware.

**Bring in a Mediator (joint strategy).** Many types of mediators may be used in cross-cultural negotiations, ranging from someone who conducts introductions and then withdraws, to someone who is present throughout the negotiation and takes responsibility for orchestrating the negotiation process (compare Kolb,

1983a). Interpreters will often play this role, providing both parties with more information than the mere translation of words during negotiations. Mediators may encourage one side or the other to adopt one of the culture’s approaches or a third cultural approach (the mediator’s home culture). (Refer back to Chapter 12 for perspectives on third party actions.)

**Induce the Other Party to Use Your Approach (joint strategy).** The third option available to the negotiator with low familiarity with the other party’s culture is to persuade the other party to use your approach. There are many ways to do this, ranging from a polite request to asserting rudely that your way is best. It can also be done with more subtlety by continuing to respond in your own language to their requests because you “cannot express yourself well enough in their language.” Although this strategy has many advantages for the negotiator with low familiarity, there are also some disadvantages. For instance, the other party may become irritated or insulted at having to make the extra effort to deal with you on your own cultural terms. In addition, the other party may also have a strategic advantage because she may now attempt more extreme tactics, and if they don’t work, excuse them on the basis of “cultural ignorance” (after all, you can’t expect them to understand everything about how you conduct business).

### Moderate Familiarity

**Adapt to the Other Party’s Approach (unilateral strategy).** This strategy involves making conscious changes to your approach so that it is more appealing to the other party. Rather than trying to act like the other party, negotiators using this strategy maintain a firm grasp on their own approach but make modifications to help relations with the other person. These modifications may include acting in a less extreme manner, eliminating some behaviors, and including some of the other party’s behaviors. The challenge in using this strategy is to know which behaviors to modify, eliminate, or adopt. In addition, it is not clear that the other party will interpret your modifications in the way that you have intended.

**Coordinate Adjustment (joint strategy).** This strategy involves both parties making mutual adjustments to find a common process for negotiation. Although this can be done implicitly, it is more likely to occur explicitly (“How would you like to proceed?”), and it can be thought of as a special instance of negotiating the *process* of negotiation (refer back to Chapter 6). This strategy requires a moderate amount of knowledge about the other party’s culture and at least some facility with their language (comprehension of their language, if not the ability to speak). Coordinating adjustment occurs on a daily basis in Montreal, the most bilingual city in North America (85 percent of Montrealers understand both English and French). It is standard practice for business people in Montreal to negotiate the process of negotiation before the substantive discussion begins. The outcomes of this discussion are variations on the theme of whether the negotiations will occur

in English or French, with a typical outcome being that either party may speak either language. Negotiations often occur in both languages, and frequently the person with the superior second-language skills will switch languages to facilitate the discussion. Another outcome that occasionally occurs has both parties speaking in their second language (i.e., the French speaker will negotiate in English while the English speaker will negotiate in French) to demonstrate respect for the other party. Another type of coordinating adjustment occurs when the two negotiating parties adopt aspects of a third culture to facilitate their negotiations. For instance, during a recent trip to Latin America, one of the authors of this book conducted discussions in French with a Latin American colleague who spoke Spanish and French, but not English.

### High Familiarity

**Embrace the Other Party's Approach (unilateral strategy).** This strategy involves adopting completely the approach of the other party. To be used successfully, the negotiator needs to be completely bilingual and bicultural. In essence, the negotiator using this strategy doesn't "act like a Roman," he or she *is* "a Roman." This is a costly strategy to use (in preparation time and expense) and places the negotiator using it under considerable stress (it is difficult to switch back and forth rapidly between cultures). On the other hand, there is much to gain by using this strategy because the other party can be approached and understood completely on their own terms.

**Improvise an Approach (joint strategy).** This strategy involves crafting an approach that is specifically tailored to the negotiation situation, other party, and circumstances. Both parties to the negotiation need to have high familiarity with the other party's culture and a strong understanding of the individual characteristics of the other party to use this approach. The negotiation that emerges with this approach can be crafted with aspects from both cultures adopted when they will be useful. This approach is the most flexible of the eight strategies, which is both its strength and weakness. Flexibility is a strength because it allows the approach to be crafted to the circumstances at hand, but it is a weakness because there are few general prescriptive statements that can be made about how to use this strategy.

**Effect Symphony (joint strategy).** This strategy works to "transcend exclusive use of either home culture" (Weiss, 1993, p. 19) by the negotiation parties and instead has them create a new approach that may include aspects of either home culture or adopt practices from a third culture. Professional diplomats use such an approach when the customs, norms, and language that they use transcend national borders and form their own culture (diplomacy). Use of this strategy is complex and involves a great deal of time and effort. It works best when the parties are very familiar with each other, familiar with both home cultures, and have a

common structure (like that of professional diplomats) for the negotiation. Risks of using this strategy include costs due to confusion, time lost, and the overall effort required to make it work.

## SUMMARY

This chapter examined various aspects of a growing field of negotiations that explores the complexities of negotiating across borders. We began the chapter with a discussion of a research program by John Graham and his colleagues (Graham, 1993) that compared American negotiators with negotiators from 15 other countries. Graham and his colleagues found that regardless of where negotiators were from, they negotiated the same level of outcomes on a standard negotiation task. The process of negotiation differed across countries, however, suggesting that there is more than one way to attain the same negotiation outcome. Finally, this research program also suggested that negotiators seem to use different strategies when negotiating with people domestically and internationally.

We then examined some of the factors that make cross-border negotiations different. Salacuse (1988) suggested six factors that increase the challenge of conducting negotiations across borders: (1) political and legal pluralism, (2) international economic factors, (3) foreign governments and bureaucracies, (4) instability, (5) ideology, and (6) culture. Each of these factors acts to make cross-border negotiations more difficult, and effective international negotiators need to understand how to manage these factors.

The chapter then discussed the RBC Model of International Negotiations (Weiss, 1993). This model provides a snapshot of the factors that influence negotiations at a given point in time and suggests that relationships, behaviors, and conditions are good organizing principles for comparing negotiations across borders. This model has great potential for both academics and practitioners. It can help organize the results of a fragmentary and somewhat opportunistic research area, while at the same time providing a strong guideline for preparing for negotiations.

We then turned to a discussion of culture, the factor that has been most frequently used to explain differences in negotiations across borders. We use the term *culture* to refer to the shared values and beliefs that are held by members of a group. The most comprehensive study of cultural dimensions in international business was conducted by Hofstede (1980a, 1980b, 1989, 1991). Hofstede concludes that four dimensions can summarize cultural differences: (1) power distance, (2) individualism/collectivism, (3) masculinity/femininity, and (4) uncertainty avoidance. Janosik (1987) maintains that culture is used in at least four different ways by researchers and practitioners in negotiations across borders: (1) culture as learned behavior, (2) culture as shared values, (3) culture as dialectics, and (4) culture in context. Each of these uses of the term *culture* has strengths and weaknesses, and occasionally there are communication breakdowns between researchers and practitioners when they use the same word in such different ways.



We then examined in more detail the negotiation styles of three different countries from the Pacific Rim: Japan, China, and Korea. Each of these countries has an increasingly important trade relationship with the United States, so it is important for the effective international negotiator to be aware of their negotiation styles. Although there are similarities among the negotiation styles from the three countries, there are also important differences.

The chapter concludes with a discussion of how to manage cultural differences when negotiating across borders. Weiss presents eight different culturally responsive strategies that negotiators can use with a negotiator from a different culture. Some of these strategies may be used individually, whereas others are used jointly with the other negotiator. Weiss indicates that one critical aspect of choosing the correct strategy for a given negotiation is the degree of familiarity that a negotiator has with the other culture. However, even those with high familiarity with another culture are faced with a daunting task if they want to modify their strategy completely when they deal with the other culture.

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## READING 11-2

## American Strengths and Weaknesses

Tommy T. B. Koh

## AMERICAN STRENGTHS AND QUALITIES

Two caveats are appropriate for any discussion of national negotiating styles. First, there may not necessarily be a definable negotiating style for each country or people. Good and effective negotiators, irrespective of their national or cultural background, have certain common skills. Second, although it is probably possible to say impressionistically that the American people possess certain character and personality traits, there are many exceptions to the rule, and a person's negotiating style is inevitably affected by his character, temperament, and attitude toward people.

American negotiators have many strengths and qualities. If distance makes the heart grow fonder, my perception of Americans may be unrealistically favorable and idealized, since Singapore is located 12,000 miles away from the United States.

First, U.S. negotiators are usually well prepared. They arrive at negotiations with their homework completed, and they are armed with facts, figures, maps, and charts. They usually know what their national interests are and what their negotiating objectives are. This is not always the case among Third World negotiators.

Second, American negotiators tend to speak clearly and plainly. As someone who was educated in the Anglo-Saxon legal tradition, I regard this as a virtue, not a liability. However, the American preference for plain speaking can sometimes cause unintended offense to other negotiators whose national culture prefers indirectness, subtlety, and avoidance of confrontation. There are, of course, exceptions to this rule.

Third, U.S. negotiators tend to be more pragmatic than doctrinaire. They focus on advancing their country's interests rather than principles which they cherish. The Reagan administration, however, was a clear exception to this rule, and at the Third U.N. Conference on the Law of the Sea, decided, for rational and arguable reasons, that principles were more important than interests.

Fourth, American negotiators generally do not regard negotiations as a zero-sum game. A good U.S. negotiator is even prepared to put himself in the place of his negotiating adversary. A good U.S. negotiator is prepared to admit that his adversary, like himself, has certain irreducible, minimum national interests. A good U.S. negotiator is prepared to engage in a process of give and take, and he believes that the successful outcome of a negotiation is not one in which he wins everything and his adversary loses everything, but rather one in which there is a mutuality of benefits and losses, in which each side has a stake in honoring and maintaining the agreement.

Fifth, a U.S. negotiator's opening position is never his final position. He expects his opponent to make a counterproposal or a counteroffer. He is anxious to reach an agreement and will, therefore, make concessions to his opponent, expecting—not unreasonably—that his adversary will behave in like manner. Americans are sometimes completely exasperated at international forums when their adversaries do not behave as they do.

Sixth, the American people are very candid and straightforward, and this is reflected in their negotiating style. Americans are not usually perceived as cunning or devious. In only one incident have I found American negotiators to be devious, and that was shocking. This incident occurred in July 1981 when the United Nations sponsored an international conference on Cambodia. The conference was initiated by the ASEAN (Association of Southeast Asian Nations) countries, which proposed a framework for the resolution of the Cambodian situation. All Cambodian factions were invited to participate in the conference, including, of course, the Khmer Rouge. Vietnam was invited, but boycotted the meeting. At the conference, General Alexander Haig, then U.S. Secretary of State staged a dramatic walk-out, accompanied by the entire U.S. delegation, when the Khmer Rouge leader approached the rostrum to speak. The picture of this walk-out appeared on the front page of the *New York Times*.

On a subsequent day, the ASEAN countries and the People's Republic of China (PRC) were locked in a ferocious confrontation over the future role of the Khmer Rouge in any post-settlement Cambodia. The ASEAN countries argued that in light of the massacres and atrocities that the Khmer Rouge had committed, it would be morally and legally impermissible to allow them to return to power. We demanded a public election to be organized and supervised by the United Nations. To ensure free elections, we insisted that all armed elements be disarmed or sequestered in camp. The Chinese fought against all these points. The negotiating group was composed of 25 delegations, but the dynamics of the discussions revolved around the PRC, the ASEAN countries, and Pakistan as a middleman. Pakistan, however, was not an honest broker and basically submitted a series of amendments to dilute the ASEAN position. I assumed that Pakistan, because of its proximity to the PRC, was "fronting" for the Chinese, and was shocked to learn later that they were actually fronting for the Americans. Although the American delegation had publicly walked out of the negotiations, they were privately supporting China for geostrategic reasons. This is the only example of devious behavior by American negotiators of which I am aware, but I will remember it.

## WEAKNESSES AND IDIOSYNCRASIES

One problem in negotiating with Americans is that American delegations usually suffer from serious interagency rivalries. During the U.N. Law of the Sea Conference, the American delegation met every morning and sometimes their internal meetings lasted longer than the other meetings in the conference.

A second problem in negotiating with the United States is the separation of power between the administration and the Congress. One has to be very careful if one is negotiating an agreement that is subject to ratification by the U.S. Senate. It is important to always keep in touch with U.S. senators as the negotiating process continues in order to obtain their independent inputs, be aware of their sensitivities, and recognize vested domestic interests and blocking constituencies.

A third special characteristic is the influence of the U.S. private sector and private interest groups on negotiations. During the Law of the Sea Conference I made it a point to meet not only with the official U.S. delegation and members of the Congress, but also to meet with representatives from the seabed mining industry, the petroleum industry, fishing industry, the marine scientific community, the environmental lobby, and individuals who have an affection for marine mammals. The reality of political life in America is that even one of these many lobbies can block ratification of a treaty. Foreign negotiators must understand the domestic political process in the United States and must, in some way, interfere in American internal affairs to ensure the success of their mission.

A fourth problem—the role of U.S. media—is a problem more for U.S. negotiators than for their counterparts. This is a problem because somehow the good nature of Americans and their propensity to candor makes it very difficult even for negotiators to keep confidences. And, in the midst of a sensitive negotiation it is sometimes very counterproductive for the media to report on issues that are under negotiation. In a speech to the House Foreign Affairs Committee, Secretary of State George Shultz recounted with great frustration an occasion when the U.S. and U.S.S.R. were engaged in bilateral negotiations. The negotiation had reached a critical point and he had that day drafted a cable giving his final instructions. He said he found to his horror at breakfast the next morning that the *New York Times* had reported the content of his cable. Members of the U.S. media should be asked whether they should exercise more discretion and self-restraint. Do they not feel an allegiance as American citizens to the advancement and protection of American national interests? Should not the right of the public to know and the freedom of the press sometimes be modulated by competing and larger interests? The extent to which the U.S. exposes its flank makes it easier for others to win at the negotiating table.

A fifth weakness is impatience. Americans suffer from an “instant-coffee complex.” They do not have time, as Europeans and Asians do, to buy coffee beans, grind them every day, brew the coffee, enjoy the aroma, and savor every sip. Americans are always in a rush and are extremely frustrated when there is a lack of progress. Americans are result-oriented. Jeane Kirkpatrick had a shock several years ago when she visited the ASEAN capitals and met the foreign ministers of the six ASEAN countries. To each she asked, “Do you think there are prospects for settling the Cambodian conflict?” All six ASEAN foreign ministers said yes. She said, “Do you think it will be soon?” They all said, “Oh yes, very soon.” She said, “Well, how soon?” They said, “Oh, about five years’ time.” She was shocked because to an American five years’ time is certainly not soon.

A sixth weakness is cultural insensitivity. Everyone is guilty of this, not only Americans. Everyone assumes that others have similar cultures, customs, and manners. Singaporeans are “the barbarians of Southeast Asia.” We are “the least sensitive and least subtle people in the region.” But, if one is a professional negotiator, then part of the preparation for an effective negotiation is to learn enough about the culture of one’s adversary to at least avoid simple errors of behavior, attribution, and body language.

Finally, it is surprising that in many recent multilateral forums the United States has been represented by amateur rather than professional negotiators. Given that the United States is so rich in human resources and has a foreign service staffed by superstars, it is amazing how inadequately the United States is represented at important international negotiations.

## CONCLUSION

In conclusion, a good negotiator, whether an Indian, an American, a Canadian, English, Ghanaian, or whoever, is a person with certain definable skills, aptitudes, and temperaments. His character and personality have an impact on his effectiveness. Some American negotiators put people off; others readily win people’s confidence. In choosing a negotiator, select someone who does not bristle like a porcupine but who can win the trust and confidence of his negotiating partners. What are these qualities that attract people’s confidence and trust? These are moral qualities, qualities of leadership. If a negotiator is a leader, a person who acquires a reputation for competence, reliability, and trustworthiness, then others will trust him with leadership roles. The word *charisma* is not useful because it does not accurately portray the quality that bestows leadership on certain negotiators and not others. Henry Kissinger is not charismatic; he is dominating and impassive and has an exceptional intellect and a monotonous voice. In 1976, when the Law of Sea Conference was deadlocked between industrialized and developing countries, Kissinger, who was then Secretary of State and had no background in the law of the sea and knew nothing about seabed mining, spent one morning in New York meeting with the U.S. delegation. In the afternoon he met with other leaders of the Group of 77, and by the end of the day presented an innovative scheme for reconciling the competing ambitions and claims of the different countries.

There probably is an American negotiating style, and this partakes of the qualities, attitudes, customs, conventions, and reflexes that have come down through U.S. history, culture, and political institutions. On the whole, American negotiators have very positive qualities, being well prepared, reasonable, competent, and honorable. Even more than this, some, like Elliott Richardson, will take it upon themselves to be an honest broker and help to settle a conflict between two other groups in which they are a totally disinterested party. This graciousness and willingness to help is a positive attribute as well.

# NEGOTIATION

## Readings, Exercises, and Cases

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READING 8-1

## When Should We Use Agents? Direct versus Representative Negotiation

*Jeffrey Z. Rubin*  
*Frank E. A. Sander*

Although we typically conceive of negotiations occurring directly between two or more principals, often neglected in a thoughtful analysis are the many situations where negotiations take place indirectly, through the use of representatives or surrogates of the principals. A father who speaks to his child's teacher (at the child's request), two lawyers meeting on behalf of their respective clients, the foreign service officers of different nations meeting to negotiate the settlement of a border dispute, a real estate agent informing would-be buyers of the seller's latest offer—each is an instance of negotiation through representatives.

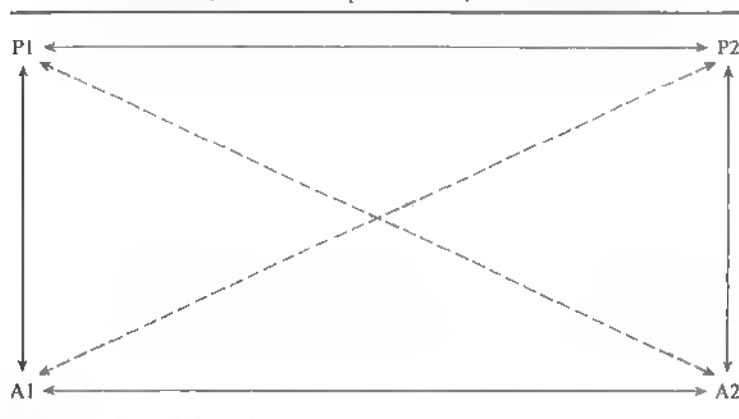
In this brief essay, we wish to build on previous analyses of representative negotiation<sup>1</sup> to consider several key distinctions between direct and representative negotiations, and to indicate the circumstances under which we believe negotiators should go out of their way either to choose or to avoid negotiation through agents.

The most obvious effect of using agents—an effect that must be kept in mind in any analysis of representative negotiation—is complication of the transaction. As indicated in Figure 1, if we begin with a straightforward negotiation between two individuals, then the addition of two agents transforms this simple one-on-one deal into a complex matrix involving at least four primary negotiators, as well as two subsidiary ones (represented by the dotted lines in Figure 1). In addition, either of the agents may readily serve as a mediator between the client and the other agent or principal. Or the two agents might act as co-mediators between the principals. At a minimum, such a complex structure necessitates effective coordination. Beyond that, this structural complexity has implications—both positive and negative—for representative negotiation in general. Let us now review these respective benefits and liabilities.

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1. See, in particular, the concise and insightful discussion by Lax and Sebenius (1986) in Chapter 15 of their *The Manager as Negotiator*.

**FIGURE 1** Possible Relations among Two Principals (P1 and P2) and Their Respective Agents (A1 and A2) (A solid line denotes an actual relation, a dotted line a potential one.)



## EXPERTISE

One of the primary reasons that principals choose to negotiate through agents is that the latter possess expertise that makes agreement—particularly favorable agreement—more likely. This expertise is likely to be of three different stripes.

**Substantive Knowledge.** A tax attorney or accountant knows things about the current tax code that make it more likely that negotiations with an IRS auditor will benefit the client as much as possible. Similarly, a divorce lawyer, an engineering consultant, and a real estate agent may have substantive knowledge in a rather narrow domain of expertise, and this expertise may redound to the client's benefit.

**Process Expertise.** Quite apart from the specific expertise they may have in particular content areas, agents may have skill at the negotiation *process*, per se, thereby enhancing the prospects of a favorable agreement. A skillful negotiator—someone who understands how to obtain and reveal information about preferences, who is inventive, resourceful, firm on goals but flexible on means, etc.—is a valuable resource. Wise principals would do well to utilize the services of such skilled negotiators, unless they can find ways of developing such process skills themselves.

**Special Influence.** A Washington lobbyist is paid to know the “right” people, to have access to the “corridors of power” that the principals themselves are unlikely to possess. Such “pull” can certainly help immensely, and is yet another form of expertise that agents may possess, although the lure of this “access” often outweighs in promise the special benefits that are confirmed in reality.

Note that the line separating these three forms of expertise is often a thin one, as in the case of a supplier who wishes to negotiate a sales contract with a prospective pur-

chaser, and employs a former employee of the purchaser to handle the transaction; the former employee, as agent, may be a source of both substantive expertise *and* influence.

Note also that principals may not always know what expertise they need. Thus, a person who has a dispute that seems headed for the courts may automatically seek out a litigator, not realizing that the vast preponderance of cases are settled by negotiation, requiring very different skills that the litigator may not possess. So, although agents do indeed possess different forms of expertise that may enhance the prospects of a favorable settlement, clients do not necessarily know what they need; it's a bit like the problem of looking up the proper spelling of a word in the dictionary when you haven't got a clue about how to spell the word in question.

## DETACHMENT

Another important reason for using an agent to do the actual negotiation is that the principals may be too emotionally entangled in the subject of the dispute. A classic example is divorce. A husband and wife, caught in the throes of a bitter fight over the end of their marriage, may benefit from the “buffering” that agents can provide. Rather than confront each other with the depth of their anger and bitterness, the principals (P1 and P2 in Figure 1) may do far better by communicating only *indirectly*, via their respective representatives, A1 and A2. Stated most generally, when the negotiating climate is adversarial—when the disputants are confrontational rather than collaborative—it may be wiser to manage the conflict through intermediaries than run the risk of an impasse or explosion resulting from direct exchange.

Sometimes, however, it is the *agents* who are too intensely entangled. What is needed then is the detachment and rationality that only the principals can bring to the exchange. For example, lawyers may get too caught up in the adversary game and lose sight of the underlying problem that is dividing the principals (e.g., how to resolve a dispute about the quality of goods delivered as part of a long-term supply contract). The lawyers may be more concerned about who would win in court, while the clients simply want to get their derailed relationship back on track. Hence the thrust of some modern dispute resolution mechanisms (such as the mini-trial) is precisely to take the dispute *out* of the hands of the technicians and give it back to the primary parties.<sup>2</sup>

Note, however, that the very “detachment” we are touting as a virtue of negotiation through agents can also be a liability. For example, in some interpersonal negotiations, apology and reconciliation may be an important ingredient of any resolution (see, e.g., Goldberg, Green, and Sander, 1987). Surrogates who are primarily technicians may not be able to bring to bear these empathic qualities.

## TACTICAL FLEXIBILITY

The use of agents allows various gambits to be played out by the principals, in an effort to ratchet as much as possible from the other side. For example, if a seller asserts

2 Compare in this connection the unfortunate recent decision of the United States Court of Appeals for the Seventh Circuit to the effect that a federal district court judge has no power to compel principals with settlement authority to attend a settlement conference. *G. Heileman Brewing Co. v. Joseph Out Corp.*, 848 F.2d 1415 (7th Circuit 1988).

that the bottom line is \$100,000, the buyer can try to haggle, albeit at the risk of losing the deal. If the buyer employs an agent, however, the agent can profess willingness to pay that sum but plead lack of authority, thereby gaining valuable time and opportunity for fuller consideration of the situation together with the principal. Or an agent for the seller who senses that the buyer may be especially eager to buy the property can claim that it is necessary to go back to the seller for ratification of the deal, only to return and up the price, profusely apologizing all the while for the behavior of an "unreasonable" client. The client and agent can thus together play the hard-hearted partner game.

Conversely, an agent may be used in order to push the other side in tough, even obnoxious, fashion, making it possible—in the best tradition of the "good cop/bad cop" play—for the client to intercede at last, and seem the essence of sweet reason in comparison with the agent. Or the agent may be used as a "stalking horse," to gather as much information about the adversary as possible, opening the way to proposals by the client that exploit the intelligence gathered.

Note that the tactical flexibility conferred by representative negotiations presupposes a competitive negotiating climate, a zero-sum contest in which each negotiator wishes to outsmart the other. It is the stuff of traditional statecraft, and the interested reader can do no better than study the writings of Schelling (1960) and Potter (1948), as well as Lax and Sebenius (1986). To repeat, the assumption behind this line of analysis is that effective negotiation requires some measure of artifice and duplicity, and that this is often best accomplished through the use of some sort of foil or alter ego—in the form of the agent. But the converse is not necessarily true: Where the negotiation is conducted in a problem-solving manner (cf. Fisher and Ury, 1981), agents may still be helpful, not because they resort to strategic ruses, but because they can help articulate interests, options, and alternatives. Four heads are clearly better than two, for example, when it comes to brainstorming about possible ways of reconciling the parties' interests.

Offsetting—indeed, typically *more* than offsetting—the three above apparent virtues of representative negotiation are several sources of difficulty. Each is sufficiently important and potentially problematic that we believe caution is necessary before entering into negotiation through agents.

### EXTRA "MOVING PARTS"

As indicated in Figure 1, representative negotiations entail greater structural complexity, additional moving parts in the negotiation machinery that—given a need for expertise, detachment, or tactical flexibility—can help move parties toward a favorable agreement. Additional moving parts, however, can also mean additional expense, in the form of the time required in the finding, evaluating, and engaging of agents, as well as the financial cost of retaining their services. And it can mean additional problems, more things that can go wrong. For instance, a message intended by a client may not be the message transmitted by that client's agent to the other party. Or the message received by that agent from the other party may be very different from the one that that agent (either deliberately or inadvertently) manages to convey to his or her client.

At one level, then, the introduction of additional links in the communication system increases the risk of distortion in the information conveyed back and forth between the principals. Beyond that lies a second difficulty, the possibility that eventually the principals will come to rely so extensively on their respective agents that they no longer

communicate directly—even though they could, and even though they might well benefit from doing so. In effect (see Figure 1), P1, in order to reach P2, now invariably goes through the A1–A2 chain, even though such maneuvering is no longer warranted. Consider, for example, the case of a divorcing couple who, in explicit compliance with the advice of their adversary lawyers, have avoided any direct contact with each other during the divorce proceedings. Once the divorce has been obtained, will the parties' ability to communicate effectively with each other (e.g., over support and custody issues) be adversely affected by their excessive prior reliance on their attorneys?

Yet another potentially problematic implication of this increasingly complex social machinery is that unwanted conditions may arise that apply undue pressure on individual negotiators. Thus A2, in performing a mediatory function between P2 and the other side (P1 and A1) may be prone to become allied with the opposing team—or at least to be so viewed by P2. Greater number does not necessarily mean greater wisdom, however, and the pressures toward uniformity of opinion that result from coalition formation may adversely affect the quality of the decisions reached.

In sum, the introduction of agents increases the complexity of the social apparatus of negotiation, and in so doing increases the chances of unwanted side effects. A related problem should be briefly noted here: the difficulty of asymmetry, as when an agent negotiates not with another agent but directly with the other principal. In effect, this was the case in 1978 when Egypt's Sadat negotiated with Israel's Begin at Camp David. Sadat considered himself empowered to make binding decisions for Egypt, while—at least partly for tactical purposes—Begin represented himself as ultimately accountable to his cabinet and to the Israeli parliament. While this "mismatched" negotiation between a principal (Sadat) and an agent (Begin) *did* result in agreement (thanks in good measure to President Carter's intercession as a mediator), it was not easy. The asymmetry of role meant that the two sides differed in their readiness to move forward toward an agreement, their ability to be shielded by a representative, and their willingness/ability to guarantee that any agreement reached would "stick."<sup>3</sup>

Different dynamics will characterize the negotiation depending on whether it is between clients, between lawyers, or with both present. If just the clients are there, the dealings will be more direct and forthright, and issues of authority and ratification disappear. With just the lawyers present, there may be less direct factual information but concomitantly more candor about delicate topics. Suppose, for example, that an aging soprano seeks to persuade an opera company to sign her for the lead role in an upcoming opera. If she is not present, the opera's agent may try to lower the price, contending that the singer is past her prime. Such candor is not recommended if the singer is present at the negotiation.<sup>4</sup>

### Problems of "Ownership" and Conflicting Interests

In theory, it is clear that the principal calls the shots. Imagine, however, an agent who is intent on applying the *Getting to Yes* (Fisher and Ury, 1981) approach by searching for objective criteria and a fair outcome. Suppose the client simply wants the best

3. Compare in this connection Rule 4.2 of the American Bar Association's Model Rules of Professional Conduct, which prohibits a lawyer from dealing directly with the opposing principal, if that principal is represented by an attorney.

possible outcome, perhaps because it is a one-shot deal not involving a future relationship with the other party. What if the agent (a lawyer, perhaps) *does* care about his future relationship with the other *agent*, and wants to be remembered as a fair and scrupulous bargainer? How *should* this conflict get resolved and how, in the absence of explicit discussion, *will* it be resolved, if at all? Conversely, the client, because of a valuable long-term relationship, may want to maintain good relations with the other side. But if the client simply looks for an agent who is renowned for an ability to pull out all the stops, the client's overall objectives may suffer as the result of an overzealous advocate.

This issue may arise in a number of contexts. Suppose that, in the course of a dispute settlement negotiation,<sup>4</sup> a lawyer who is intent on getting the best possible deal for a client turns down an offer that was within the client's acceptable range. Is this proper behavior by the agent? The Model Rules of Professional Conduct for attorneys explicitly require (see Rules 1.2(a), 1.4) that every offer must be communicated to the principal, and perhaps a failure to do so might lead to a successful malpractice action against the attorney if the deal finally fell through.

Another illustration involves the situation where the agent and principal have divergent ethical norms. Suppose that a seller of a house has just learned that the dwelling is infested with termites, but instructs the agent not to reveal this fact, even in response to specific inquiry from the buyer. How should these tensions be fairly resolved, keeping in mind the fact that the agent may be subject to a professional code of conduct that gives directions that may conflict with the ethical values of the client?<sup>5</sup> There may, of course, be artful ways of dealing with such dilemmas, as, for example, slyly deflecting any relevant inquiry by the buyer. But preferably these problems should be explicitly addressed in the course of the initial discussion between agent and principal. To some extent, the problem may be resolved by the principal's tendency to pick an agent who is congenial and compatible. But, as we pointed out before, principals are not always aware of and knowledgeable about the relevant considerations that go into the choice of an agent. Hence, if these issues are not addressed explicitly at the outset, termination of the relationship midstream in egregious cases may be the only alternative.

Differing goals and standards of agent and principal may create conflicting pulls. For example, the buyer's agent may be compensated as a percentage of the purchase price, thus creating an incentive to have the price as high as possible. The buyer, of course, wants the lowest possible price. Similarly, where a lawyer is paid by the hour, there may be an incentive to draw out the negotiation, whereas the client prefers an expeditious negotiation at the lowest possible cost.

While these are not insoluble problems, to be sure, they do constitute yet another example of the difficulties that may arise as one moves to representative negotiations. Although in theory the principals are in command, once agents have been introduced the chemistry changes, and new actors—with agenda, incentives, and constraints of their own—are part of the picture. Short of an abrupt firing of the agents, principals may find themselves less in control of the situation once agents have come on the scene.

4. See Sander and Rubin (1988) for a discussion of the differences between dealmaking and dispute settlement negotiation.

5. See, for example, Rule 4.1 of the ABA's Model Rules of Professional Conduct, prohibiting attorneys from making materially false statements.

## ENCOURAGEMENT OF ARTIFICE AND DUPLICITY

Finally, as already noted, the introduction of agents often seems to invite clients to devise stratagems (with or without these agents) to outwit the other side. Admittedly, there is nothing intrinsic to the presence of representatives that dictates a move in this direction; still, perhaps because of the additional expense incurred, the seductive lure of a "killing" with the help of one's "hired gun," or the introduction of new, sometimes perverse incentives, representative negotiations often seem to instill (or reflect) a more adversarial climate.

## CONCLUSION

It follows from the preceding analysis that, ordinarily, negotiations conducted directly between the principals are preferable to negotiation through representatives. When the principals' relationship is fundamentally cooperative or informed by enlightened self-interest, agents may often be unnecessary; since there is little or no antagonism in the relationship, there is no need for the buffering detachment afforded by agents. Moreover, by negotiating directly, there is reduced risk of miscoordination, misrepresentation, and miscommunication.

On the other hand, representative negotiation *does* have an important and necessary place. When special expertise is required, when tactical flexibility is deemed important and—most importantly—when direct contact is likely to produce confrontation rather than collaboration, agents *can* render an important service.

Above all, the choice of whether to negotiate directly or through surrogates is an important one, with significant ramifications. It therefore should be addressed explicitly by weighing some of the considerations advanced above. And if an agent is selected, careful advance canvassing of issues such as those discussed here (e.g., authority and ethical standards) is essential.

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NYT 9.17.89

# Home Sellers Trimming Brokers' Fees

## As Prices Slip in Soft Market, Many Won't Pay 6 Percent

By IVER PETERSON

**M**ICHELLE KANE is looking for a house with more room for her private psychotherapy practice, so her current home, a dramatic four-bedroom contemporary in Great Neck, L.I., is up for sale.

But while the listing agreement with her broker promises to pay the standard 6 percent commission if the broker sells the house, Mrs. Kane has already told her broker that the fee will be negotiable, and will depend on the price she and her husband, Steven, an advertising executive, get.

"You don't agree on the commission until you have an offer," she declared with the certainty of a house-seller who has done her homework. "If the buyer will only pay you a certain amount, you go to your broker and say, 'I want to make this deal and you want to make the deal, so how much do you want to give up so they can buy it?'"

She did not know it, but her approach to setting a broker's commission is becoming more common as house and apartment sellers increasingly insist on negotiating the broker's commission. Once common at the upper reaches of the housing market, where no broker expected to get the standard 6 percent on, say, a \$2 million house, the negotiated lower commission is by all accounts spreading in the New York region and other areas of market weakness, where sellers are using it to shift some of the

pain of falling prices to the reluctant shoulders of brokers.

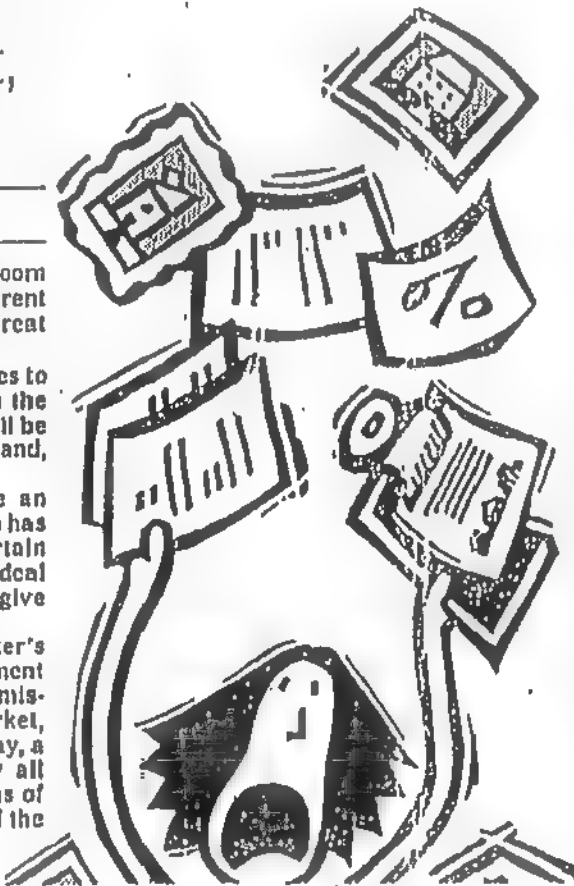
"With prices coming down, people are saying, 'O.K., we're going to have to take that much less on our price. You, Mr. Broker, are going to have to come down that much on your commission, too,'" said Carolyn Janik, a former real estate broker who now writes how-to books for people buying or selling a house. "The poor brokers hate it and they don't want to talk about it, but it's being done."

What makes this growing practice most galling to brokers is not being asked to negotiate a lower commission at the time of listing a property, but being "sneadbagged" — as one put it — by a demand for a reduced commission when an offer to buy is at hand.

"My feeling is that in no other industry do you do your job and work this hard and then have people ask to pay less than they agreed to," said Ruth Goldstein, regional vice president for Weichert Realtors in Bergen County, N.J. "How would you feel at the end of the week if your employer came to you and said, 'Listen, I don't want to pay you.' Wouldn't you feel rotten? That's how I feel."

Brokers convey their distaste for negotiated settlements very forcefully to sellers. Their resistance to discounting commissions may help explain why the 6 percent commission had come to be regarded as all but immutable to so many sellers. Although most listing agreements carry bold-faced disclaimers that commissions are not set by law and are always negotiable, the 6 percent commission is still widely observed, brokers say. To insist on a lower commission in the listing agreement, the argument goes, only reduces the broker's incentive to work hard toward a sale. As Mrs. Kane put it: "If you negotiate a 3 percent

Continued on Page 18, Col. 1



*Continued from Page 1*

commission when you put the house on the market you only get 1 percent effort from the broker."

But the listing agreement is binding on the seller only if the offer is for the full list terms of the listing agreement, Ms. Janik said.

A seller faced with an offer lower than the listing price, or with a buyer's demand that his closing costs be paid or for some other concession, often comes under intense pressure from the broker to accept the deal.

That is the moment — when the broker smells pay dirt and needs the buyer's cooperation — to demand a reciprocal sacrifice from the broker, Ms. Janik maintained. Her advice is to be direct.

"YOU sit your broker down," she said, "and you say, 'Look, I'm hurting, so let's all hurt a little and let's all profit a little.'" Then, she said, make sure the negotiated agreement is written into the settlement so that there are no arguments at the closing about fees.

There is more of this negotiating going on now, in a tough market, than in a good market," Ms. Janik said. "In a good market everybody is making money and you're grateful to the broker for getting you so much. In a tough market everyone starts counting the pennies."

Such negotiations often do not have to mention a reduced commission percentage, experts say, but can be pegged to certain expenses associated with closing a deal such as repairs or inspections, that the broker agrees to pay.

"If I'm entitled to \$6,000 on a commission and there is a termite inspection that costs \$300, I might pay for the inspection," said William D. North, executive vice president of the National Association of Realtors, the trade association.

"Or if the difference is \$500 to bring the buyers and the sellers together, the broker may look at his own income from the deal and make it up himself. This happens in many cases, and it provides flexibility."

The modest sums in Mr. North's example do not reflect the large amounts that are often involved in even normal house sales these days, when the median price of a home in the greater New York area is \$180,000.

The increase in housing prices over the last five years may have set the stage for a consumer onslaught on brokerage fees, some brokers said, because commissions seem to have increased so much faster than the amount of work that goes into the sale of a house.

A Stamford, Conn., broker said in an interview that he sold a house last spring for \$140,000 that he had sold for \$160,000 eight years earlier, and he was not surprised when the sellers insisted he shave his commission to make the deal go through.

"A lot of it is psychological," he said on condition that his name not be used. "People

are just looking for ways to avoid commissions back then, but they'll fight you over \$20,000 or \$25,000 today. They're both 6 percent, but the big numbers just seem unfair to them."

One reason for the broker's request for anonymity is his reluctance to become known as a price-cutter in the tightly interwoven and interdependent community of brokers, where referrals are an important source of business and fees are often shared. A Long Island broker with business in Queens and Nassau Counties refused to even discuss commission shaving, saying — before hanging up the phone — "I do not want to be part of this conversation."

Commission haggling occurs in New York City's condominium and cooperative apartment market, too, several brokers said. It is the seller-owners of less expensive properties, rather than of the \$1 million and \$2

**The real estate industry defends its fees by arguing that selling housing today is much more complicated than it once was.**

million units, who tend to try to shave commissions the hardest, said Peter R. Marra, president of William B. May Company, a management and brokerage concern with four sales offices in the city and one in Westchester County.

"A lot of people have the feeling that, well, the broker will cut," Mr. Marra said. "The guy comes and says he didn't know there was a flip tax and the taxes are going up and there's going to be a maintenance increase in July, and he wants the broker to eat it."

A flip tax is a kind of capital gains charge many co-op boards levy on the increased value of an apartment when it is sold.

"I try to deal with it on an individual basis," Mr. Marra said. "But I think that if we establish the commission up front, we're in a better position to say, 'Look, we've already had this discussion when you signed up for our services and that was your opportunity to talk about fees.'"

**C**ONSUMERS may complain that housing prices, and therefore real estate commissions, have risen far faster than both the cost of living in general and the broker's cost of doing business. The real estate brokers defend their increased fees by arguing that selling housing today is much more complicated and time-consuming than it once was.

The biggest change has arisen, Mr. North

same way, above all the difficulties people have had finding financing for a house purchase since the advent of higher interest rates and tightened mortgage qualifying standards, and the corresponding increase in the number of deals that have fallen through as a result of such difficulties.

**FIN** (p. 60) says I thought brokers were becoming waiting more than a tour guide for properties, but things are so much more complicated now," he said. "There's seller financing, paybacks, different kinds of adjustable rates, V.A. mortgages, F.H.A. mortgages.

"While they don't practice law, I will tell you that the involvement of the broker in all of those arrangements is very heavy, and in practical terms the very cost of reviewing those arrangements with your lawyer would greatly exceed your fee to the broker."

Moreover, brokers complain that what looks like a big 6 percent commission at the time of sale in fact gets cut up four ways if the deal is co-brokered, and an agent of a firm other than the one the property is listed with makes the sale. Then the fee is generally split, with equal amounts going to each of the two sales agents and to the two brokerage houses.

Twenty years ago, brokers' fees were largely governed by a schedule of suggested commission rates set by the National Association of Realtors in response to court requests for uniform standards as a protection against dishonest probate trustees and executors of wills. The rule then was 5 or 6 percent, Mr. North said.

In 1971, however, the Federal Trade Commission determined that the recommended fee schedules that brokers, along with law-

yers, physicians and others were using, violated antitrust laws.

A major survey of professional fees at the time said of brokerage fees that the rates were so uniform "as to suggest a high level of collusion."

But Mr. North argues that the 6 percent reflects a balance of market forces, a "competitive uniformity," in his phrase, that has resulted from a business perception by brokers that they can't get away with charging more and don't have to accept less.

In fact, however, the advent of the so-called discount broker, who only charges according to the kinds of house-selling services desired, has shown that brokers will accept less. The crack in the 6 percent uniformity has in turn caused more haggling over commissions for conventional brokers.

Deane Flynn, marketing director for Help-U-Sell Inc., a discount brokerage chain based in Salt Lake City and owned by Mutual Benefit Life Insurance Company of Newark, said: "Why should I pay so much? We hear that so much from people now that it's really starting to hit them that they're paying way too much for a broker."

**HELP-U-SELL** is one of several discount brokers — they prefer to be called "multiple option" brokers — that have sprung up during the upsurge in real estate prices in recent years. All promote the notion that conventional brokerage fees are too high for the prices people pay for housing, and all make a saving by shilling the most expensive part of real estate selling — showing houses — to the sellers.

"I'm not knocking these ladies who bring people through and say, 'Oooh, I love those colors,' and 'Isn't that beautiful,'" said Jim Hyland, an investment adviser who moved from Chatham, N.J., to Sarasota, Fla., last winter. "But the fact is that they can't sell your house as well as you can. They just don't know the place the way the owner does."

Mr. Hyland had sold one house through a conventional broker who collected his 6 percent sales commission from the first client to

see the house. He listed his last house with By Owner-Broker Inc., a Morrisstown, N.J., agency that scales its fees according to the amount of work done.

He and his wife, Carol, contracted with By Owner-Broker to advertise the house in local

The advent of the so-called discount broker has shown that brokers will accept less than a 6 percent commission.

papers, guide buyers through income eligibility and financing services and do the final paperwork for closing in exchange for a 3 percent fee.

For the next two months the couple showed the house to about 40 potential buyers and finally sold it for \$440,000, \$15,000 less than their asking price, and paid Jim Cassidy, president of By Owner-Broker, \$13,200 instead of the \$26,400 a conventional broker would have charged.

"I think we'll see more and more sellers and brokers negotiating their fees and offering an array of services as we go into the 90's," said Mr. Cassidy, who spent eight years as a Welcher executive before starting his business 18 months ago. "It's because the competition is getting stiffer. There are more and more people like me out there."

Mrs. Kane, meanwhile, has had her Great Neck house on the market for about a month at \$467,000 with June Shapiro, a prominent Great Neck broker. Besides serving notice that the sales commission will depend on the sales price, she has also reserved the right to pay no commission if she finds a buyer herself.

**MRS. SHAPIRO** expressed no objections. "We work at all different ways of doing it," she said. "It just depends on the broker and on the seller. We all want to sell the homes and we all want to keep our customers happy."

Mrs. Kane said she decided to tailor her house-selling plan to her own design after doing a considerable amount of research into the local market and into real estate sales generally.

"People should be aware that this is something everyone is able to do," she said. "I guess if you get a terrific price and you feel the broker did a terrific job, you might feel that you don't want to negotiate at all. But if things didn't go quite so well in this quote unquote bad market, you should be able to act accordingly."



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# How to Negotiate Your Salary

**There are several do's and don'ts you should know. A practical guide that tells how to get the best paycheck for you**

**Y**ou've done it! You've been offered a job you want with an organization you like. The endless period of resume refining, letter writing, sweaty palms, and interviewing is over. But did you get the best offer possible? Could you have negotiated a better salary and more generous benefits?

This is a dilemma that many (if not most) entry-level professionals face. You want a competitive salary, but you don't want to alienate your prospective employer. The question: "Can soon-to-be college graduates negotiate salary and benefits?" The answer: It depends on several factors. Included in these are the field you intend to enter and the specific position in that field, current supply and demand, the general economic climate, size of the organization, how you compare with other candidates vying for the same kinds of positions; whether you have received other offers; and lastly, the position of the person making the offer to you.

These factors can be divided into macro-issues and micro-issues. Macro-issues, those independent of the candidate, include the position and field, the labor supply, and the overall health of the economy. As a candidate, you have no control over these conditions.

Certain positions in some fields appear to be non-negotiable. Energy spent bargaining is wasted. Examples are management trainee positions in major retail chains and staff accountants in large public accounting firms.

**By Maureen McNulty**

Maureen McNulty is director of career development and placement at Santa Clara University.

In these positions and fields the offers of good candidates and outstanding candidates may be separated at most by a few hundred dollars.

The current labor supply—supply and demand—can sharply influence the success of your negotiations. Obviously, if your skills are in short supply, the conditions favorable to negotiating increase. Conversely, if there are many qualified candidates chasing a few positions, firms are not likely to bargain easily.

Remember, a healthy economy supports negotiation. Keep in mind that organizations are much more likely to negotiate higher salaries and benefits if they feel strong and their forecasts are positive. Likewise, a stagnant economy can reduce your opportunity for negotiation substantially. Here's a case in point: Take the effects of two macro-factors (the ones you can't control), a strong supply, and an anemic economy, and you have the situation currently affecting entry-

level engineers. Although most good engineers will find jobs, their power to negotiate is not at its peak now.

The size of an organization influences your potential for bargaining, especially if you're a new professional. The larger the organization, the less room you'll have to bargain on salary. When it comes to benefits, in large firms they are non-negotiable. In some cases you can pick and choose among certain benefits. The limits put on your power to negotiate by the size of the organization tend to diminish as you gain more experience and education.

Let's suppose that all the macro-factors we've discussed are favorable for



Illustrated by Joe Ruelle

negotiation. Should you square off against your prospective employer and start bargaining? No. First examine the micro-issues—those over which you have some influence or those relevant to your individual situation.

Here are some micro-factors you'll want to weigh: It's important to know how you compare with others who've received offers. Are you their prize candidate or just a good choice? Is your degree from a top school in your field a name institution, or is your college just a dot on the map? Is your grade-point average impressive? If you have work experience you're more valuable and worth negotiating for than someone with no experience.

If your prospective employer indicates that you are superior, your bargaining position is strengthened. During the interview process, be alert for such clues.

Organizations often will want to know if you've received other offers. Be discreet, but do let the employer know that you have choices. You can use this to show that you're valued in the market. Chances are good that your prospective employer will be more open to negotiation if you indicate that you do have alternatives. A firm has made an investment in you by the time they make an offer. Generally speaking a company would rather increase its investment in you incrementally than lose it completely. So negotiate.

A third micro-factor to consider is the position of the person making the offer. An offer made by an experienced recruiter or manager can be to your advantage. A veteran recruiter will know when and how to bargain, and is more likely than a less-experienced recruiter to have more power and leeway to negotiate.

Okay, now you've reviewed your situation in light of these macro- and micro-factors. After tallying the positives and negatives, you decide it's time to negotiate. Before you go to the bargaining table with your prospective employer, let's review what negotiation is (and is not). Negotiating is not a game in a winner/loser sense.

A good negotiator will emphasize mutual gains—that means compromise. In the bargaining process, everyone wins with compromise. In successful salary and benefit negotiation, you'll gain financial reward and self-esteem and your employer wins a positive, committed staff member.

Negotiation is divided into three phases: analysis, planning, and discussion. Although it's human nature to want to leap right to the discussion phase, doing so could be devastating.

Patience is key, followed by persistence, and determination. Let's examine each phase:

**Analysis.** First, examine why you want to negotiate the offer. "Because I shouldn't accept the first offer" or "because my friends always negotiate" is not sufficient reason. If you've done your homework, you'll have a good notion of whether the offer is fair or not. Employers don't respond well if you argue on the basis of your needs or wants. They do respond to what the market indicates someone with your qualifications is worth.

Before you dive into negotiations, research carefully how salaries are set. Find out the going rate for the position in your geographic region, as well as the history and structure of the organization you're interested in. Campus career centers, professional and trade associations, and personnel agencies can help you with this task.

Decide exactly what you want to negotiate. Salary is the most likely target. Benefits are also part of remuneration. You may want to think about the firm's package. Health and life insurance, vacations, tuition plans, and relocation expenses are worth examining. Your start date and the amount of out-of-town travel may be negotiable. Although some entry-level professionals often want to negotiate a faster career path, most employers discourage this approach. Carefully explore the organization's attitude toward negotiation by researching the company and talking to employees that work there.

**Planning.** This stage, often ignored or overlooked, is the most important

phase in preparing to negotiate. Think about the decisions that you want your prospective employer to make. Ask yourself why the employer hasn't already done so. List your assumptions about the offer along with your thoughts about the employer's motives. Play devil's advocate. Try to imagine the interviewer's assumptions and instincts about your motives.

Clarify your objectives; know what end results you want. Brainstorm; add options. A "creative alternatives" attitude is the approach most likely to yield a satisfying compromise. After you've established your options, list them in order of priority. It isn't likely that you will end up with everything you ask for, but know what is most important to you. Think about how you can make it easier for an employer to agree with what you want. Review your previous encounter with the interviewer. Did you sell your skills?

Besides listing your objectives, write down your questions in advance. Before you begin bargaining, be sure you thoroughly understand the offer, including benefits. Whenever possible, study a written offer. Don't argue a point that you don't understand. Once an offer has been made, firms will be open to your questions about salary and benefits; they'll want you to have all the information you need to make a decision. At this stage, the only dumb question is the one you fail to ask.

Here, it's critical to evaluate what you'll do if you and your prospective employer don't seem to agree. Explore alternatives and give yourself room to bargain; avoid deadlocks. If a "last and

### Do's and Don'ts of Negotiating

Here's a basic list of the "do's and don'ts" of negotiating. It will serve as a useful guide during your salary bargaining session.

Keep in mind that negotiation establishes a positive relationship between you and the company for which you'll work. Both parties should be happy with the bargain each has struck.

#### Do's

1. Listen carefully; listen actively. Acknowledge what is being said.
2. Emphasize similarity of positions.
3. Approach the session with trust and a willingness to compromise.
4. Be open to "changing the shape of money" (that is, exchanging a salary increase for another kind of benefit).
5. Use firm, confident repetition ("I understand, but the market indicates..."). Avoid saying, "You're wrong".
6. Know when to stop. Recognize the critical moment.

#### Don'ts

1. Don't be antagonistic.
2. Don't interrogate the employer.
3. Don't stop listening; don't interrupt.
4. Don't emphasize your problems or needs (your employer is aware of housing and utility costs and may even have had his or her own student loan to repay). He/she won't be sympathetic. Remember, articulated needs or wants are not useful in negotiations.
5. Don't discuss an item if you are not prepared. Defer your decision, if possible. If you don't understand an issue, ask for clarification.
6. Don't enter the bargaining process with a chip on your shoulder. There is no room for discourteous and arrogant behavior. Know the difference between assertiveness and aggressiveness before you start to negotiate.
7. Don't underestimate your power. Higher expectations reap higher rewards. Be informed and confident.



final offer" is put forth, it should come from the employer, not you. Your role should be to focus on areas of common agreement. Not many actions irk prospective employers more than recent college graduates who take a "my way or else" posture.

**Discussion.** You've analyzed and planned carefully. You know the product, the rules, and your alternatives. You're in the action phase. Let's summarize the rules of negotiating. First, whenever possible, do not negotiate over the telephone. Here's why:

- You're under pressure to be decisive and to close over the phone.
- It's difficult to listen.
- Non-verbal reactions and cues can't be seen or evaluated.
- It's easier to misunderstand over the phone.
- You probably won't have enough time to think.
- It's easier for an interviewer to say "no" if he or she can't see you.

Telephone calls always work to the advantage of the negotiator who's best prepared and most experienced. If the prospective employer telephones to discuss an offer that you think you would like to negotiate, ask for a face-to-face session or arrange a telephone appointment at a later time so that you have time to plan a strategy. If you must negotiate by telephone, talk less, listen more; use a checklist and a calculator; don't be pushed into a quick decision.

Most employers agree that the more education and job experience you have, the stronger your negotiating position will be. A graduate degree, particularly from a noted institution, can in itself become a bargaining chip. Keep in mind that even a brief period of applicable experience widens your bargaining power. An experienced new professional who can show superior performance is in a far better position to negotiate successfully.

So, should you as a new college graduate negotiate an offer? If you are willing to put in the time, energy, and effort to analyse, suggest alternatives, and make concessions, the answer is "yes." Remember, it's a cooperative rather than a competitive process. The challenge is to satisfy some of your needs, while satisfying some of your prospective employer's needs.

Negotiation requires commitment from you as a new professional as well as from your employer. When it's done right, you both win. ■

**For Additional Information**

*Getting to Yes* by Roger Fisher and William Ury. Penguin Books. 176 pages; \$5.95.  
*The Art of Negotiating* by Gerard Nierenberg. Pocket Books. 256 pages; \$3.95.

